

# TRANSCRIPT OF PROCEEDINGS

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UNITED STATES DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

PUBLIC HEARING ON TRAINING AND )  
RETRAINING OF MINERS ENGAGED IN )  
SHELL DREDGING OR EMPLOYED AT )  
SAND, GRAVEL, SURFACE STONE, )  
SURFACE CLAY, COLLOIDAL )  
PHOSPHATE, OR SURFACE LIMESTONE )  
MINES PROPOSED RULE )

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Place: Washington, D.C.  
Date: May 27, 1999

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## HERITAGE REPORTING CORPORATION

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MINES PROPOSED RULE )

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C.

Thursday,  
May 27, 1999

The hearing in the above-entitled matter commenced,  
pursuant to notice, at 8:05 a.m.

PANEL:

ROSLYN FONTAINE, Office of Standards, Regulations, and  
Variances, MSHA  
ROBERT STONE, Office of Standards, Regulations, and  
Variances, MSHA  
KATHY ALEJANDRO, Metal and Nonmetal Mine Safety and  
Health Administration  
KEVIN BURNS, Metal and Nonmetal Mine Safety and Health  
Administration  
ROD BRELAND, Western Operations Manager, MSHA  
ROBERT ALDRICH, Office of the Solicitor

ATTENDEES:

HUNTER PRILLAMAN, Coalition for Effective Miner  
Training and the National Lime Association  
JOE MAIN, United Mine Workers of America  
ELSA ROMAN, States Grants Program, University of Texas

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JIM SHARPE, Director of Safety and Health Services,  
National Stone Association  
JAMES TURNER, North Carolina Department of Labor

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1 with Metal and Nonmetal Mine Safety and Health. And to my  
2 right is Robert Stone, who is with the Office of Standards,  
3 Regulations, and Variances in MSHA. Since 1979, MSHA has  
4 been guided by a rider to its appropriations.

5           The restriction currently states that none of the  
6 funds appropriated shall be obligated or expended to carry  
7 out Section 115 of the Federal Mine Safety and Health Act of  
8 1977 or to carry out that portion of Section 104(j)(1) of  
9 such Act relating to the enforcement of any training  
10 requirements with respect to shell dredging or with respect  
11 to any sand, gravel, surface stone, surface clay, colloidal  
12 phosphate, or surface limestone mine.

13           In the omnibus budget passed by Congress on  
14 October 21, 1998, MSHA was directed to work with the  
15 affected industries -- mine operators, workers, labor  
16 organizations, and other affected and interested parties --  
17 to promulgate final training regulations for the affected  
18 industries by September 30, 1999. The hearing will be  
19 conducted in an informal manner, and the court reporter will  
20 make a transcript of the proceedings.

21           Anyone who wishes to speak at this hearing and has  
22 not signed up in advance should sign up on the speaker's  
23 list, which is currently located up here, but you'll have

1 more than an adequate opportunity to speak, should you  
2 choose to do so later. We also ask that everyone who is  
3 here today, whether or not you wish to speak, sign the  
4 attendance sheet, which is located on the table immediately  
5 outside the auditorium as you come in.

6           Anyone who wishes may also submit written  
7 statements and information to us during the course of this  
8 hearing which will be included as part of the lawmaking  
9 record. You may also wish to send us written comments after  
10 the hearing. The deadline for submission of written  
11 comments is June 16, 1999. And if you need the address for  
12 where to send these comments, please come up to us at a  
13 break and we'll give you that information.

14           And if you're specifically interested in comments  
15 on certain aspects of the proposed rule -- although we  
16 encourage you to comment on any of the proposed  
17 provisions -- these issues were identified in the notice of  
18 hearing published in the *Federal Register* on April 14, 1999,  
19 and I will summarize them. Definition of miner, under the  
20 proposal: A person engaged in mining operations integral to  
21 extraction or production would be considered a miner.

22           We're interested in whether this definition is  
23 appropriate. Workers who fit the definition of miner under



1 the proposal would be required to receive comprehensive  
2 training, including new-miner training or newly hired  
3 experienced-miner training, as appropriate. Plan approval  
4 process: The proposal would require each operator to develop  
5 and implement a written training plan that includes programs  
6 for training new miners and newly hired experienced miners,  
7 training miners for new tasks, annual refresher training,  
8 and hazard training.

9 Plans that include the minimum information  
10 specified in the proposal would be considered approved and  
11 would not be required to be submitted to MSHA for formal  
12 review. Miners and their representatives would also be  
13 given the opportunity to comment on the plan before it is  
14 implemented or to request us to formally review and approve  
15 the plan.

16 We are interested in comments on whether the  
17 proposed approach is appropriate or whether any commenters  
18 believe a traditional plan-approval process similar to the  
19 process in existing Part 48 is needed to ensure the training  
20 plans meet minimum standards of quality.

21 New-miner training: Under the proposal, no minimum  
22 number of hours of training is required for a new miner  
23 before he or she begins work under the close supervision of

1 an experienced miner. Instead, the proposal requires  
2 instruction in four subject areas before the miner can  
3 assume work duties. We are interested in whether commenters  
4 agree with this approach or whether the final rules should  
5 establish a minimum number of hours of training that new  
6 miners must receive before they begin work.

7           New-task training: This proposed rule would  
8 require miners to be trained for new tasks and for regular  
9 reassigned tasks that have changed. The new task training  
10 requirements in the proposal are very performance oriented  
11 and do not include detailed specifications for this  
12 training.

13           However, we're interested in comments on whether  
14 the final rule should include more detail and guidance on  
15 the elements of an effective new-task training program, and  
16 if so, what area should be addressed.

17           Training instructors: The proposal would not  
18 require a formal program for the approval of certification  
19 of instructors or establish rigid minimum qualifications for  
20 instructors. Instead, training must be provided by a  
21 competent person, which is defined in the proposal as a  
22 person designated by the operator who has the ability,  
23 training, knowledge, or experience to provide training to

1 miners on a particular subject. Under this definition, the  
2 competent person must also be able to evaluate the  
3 effectiveness of the training. We are interested in  
4 comments on whether this approach is appropriate.

5           Annual refresher training: Under the proposal,  
6 refresher training must include, at a minimum, instruction  
7 on changes at the mine that could adversely affect the  
8 miner's health or safety. The proposal includes a list of  
9 suggested topics that refresher training could cover, but  
10 these topics are not mandatory.

11           We are interested in whether the final rule should  
12 include more detailed requirements and whether there are any  
13 other subjects that commenters believe should be required.

14           Effective dates and compliance deadlines: We're  
15 interested in comments on how much time should be allowed  
16 for the mining community to come into compliance with the  
17 final rule.

18           One possible approach would be phased-in  
19 compliance deadlines where some of the rule's requirements  
20 would go into effect at different stages. We understand  
21 that there will be a very large number of operations coming  
22 into compliance at the same time, and we wish to allow a  
23 reasonable amount of time for the transition.

1           Costs and benefits of the proposed rule: We're  
2 interested in comments on all elements, including  
3 methodology, assumptions, and data, of our analysis of the  
4 costs and benefits of compliance with the proposed rule.

5           I would now like to introduce the first speaker  
6 this morning. We ask that all speakers state and spell  
7 their name for the court reporter before beginning their  
8 presentation. Thank you very much. The first speaker on  
9 the list is Hunter Prillaman from the Coalition for  
10 Effective Miner Training and the National Lime Association.

11           MR. PRILLAMAN: Good morning. That's Hunter  
12 Prillaman. Prillaman is P-R-I-L-L-A-M-A-N. As Kathy  
13 mentioned, I'm with the National Lime Association, but today  
14 I'm representing the Coalition for Effective Miner Training,  
15 or CEMT. The Coalition is made up of 18 members  
16 representing the overwhelming majority of producers and  
17 miners affected by the proposed rule. CEMT consists of two  
18 producing companies, 14 trade associations representing  
19 producers, and two labor unions. Since last summer, CEMT  
20 has been working with MSHA to develop a workable alternative  
21 to the Part 48 training requirements for the exempt  
22 industries. On February 1st, CEMT presented its draft  
23 alternative to MSHA. CEMT is pleased to observe that, in

1 most respects, MSHA's proposed Part 46 is very similar to  
2 the CEMT draft.

3 In particular, the proposed regulations embody a  
4 flexible performance-oriented approach that's crucial for  
5 the industries that will be covered by the rule. CEMT  
6 commends MSHA for recognizing the needs and concerns of  
7 these industries. We strongly urge MSHA to take the course  
8 and to promulgate a final rule that follows the flexible  
9 approach set out in the proposed rule.

10 Members of CEMT do have some concerns with the  
11 proposed rule, and we believe that it can be improved in  
12 several respects. I'll only address a few of the more  
13 significant concerns here. Other issues of correction and  
14 clarification will be addressed in CEMT's written comments  
15 and in the written comments of its members.

16 Probably the most significant issue is the lack of  
17 a proposed effective date or implementation schedule, and we  
18 think this is a very important issue. For many producers,  
19 especially small operations, compliance with Part 46 is  
20 going to require significant preparation, and many of them  
21 are going to need help setting up training plans that  
22 satisfy the rules.

23 As a result, CEMT believes there should be a

1 reasonable time between the promulgation of the final rule  
2 and the date upon which it becomes enforceable. We suggest  
3 at least a year will be needed to ensure broad understanding  
4 of the regulations and timely compliance. We prefer that  
5 the regulations not be phased in, because we think the  
6 process should be as simple as possible. CEMT is also  
7 concerned the proposed rule largely places an obligation on  
8 the producer-operator for providing site-specific hazard  
9 training to the employees of contractors.

10 CEMT believes it's the employers of these  
11 individuals that should have the primary legal  
12 responsibility for training them, especially when the  
13 contractors' employees themselves are miners under the  
14 definition in Part 46.

15 I know I did briefly cover CEMT's response to the  
16 specific questions that were raised in the notice  
17 establishing this hearing. First, CEMT agrees with MSHA's  
18 proposed definition of miner as a person engaged in actual  
19 mining operations. This contributes to the general approach  
20 in the proposal to provide training commensurate with the  
21 risk experienced by the person to be trained.

22 With respect to the plan-approval process, CEMT  
23 does not believe that it's necessary to include provisions

1 allowing miners or their representatives to trigger a formal  
2 submission and approval process. We believe that the  
3 ability of miners and their reps to inform MSHA directly  
4 that they believe a plan is inadequate provides sufficient  
5 protection for these interests.

6 CEMT generally supports MSHA's approach to new-  
7 miner training, however, we're concerned by the narrow  
8 definition of "close supervision" given in the preamble.  
9 The requirement that a supervisor can do nothing other than  
10 supervise the trainee is unrealistic. This is particularly  
11 a problem if this definition applies to the requirement that  
12 a worker who has not yet received 24 hours of training must  
13 work under close supervision, because this could be for --  
14 well, under the proposal, it could be for a 60-day period,  
15 and that's just simply not going to be possible. There seem  
16 to be two different applications of the term "close  
17 supervision." That's something we hope can be clarified.  
18 CEMT also has the same concern with the requirement for  
19 close supervision in task training. One other thing about  
20 new-miner training: We suggested in our draft that the new-  
21 miner training be completed within 60 working days. The  
22 proposal says 60 calendar days. We think that's a little  
23 short, although we recognize the concern that because of

1 layoffs that the 60 working days could be a long period. We  
2 suggest something more like 90 calendar days, which would be  
3 approximately 60 working days for most ordinary operations.

4 CEMT strongly supports MSHA's proposal that no  
5 formal approval for instructors be required. We believe  
6 that operators are in the best position to judge who can  
7 most effectively provide the needed training, especially  
8 training that's hands-on training.

9 CEMT supports interest support on refresher  
10 training.

11 With respect to the costs and benefits of the  
12 rule, these will vary widely across the industry. Fairly  
13 larger operations are more likely to have more robust  
14 training programs already in place, although there will  
15 still be some costs involved in preparing written plans and  
16 procedures that comply with the explicit requirements of  
17 Part 46.

18 On the hand, there are small operations that do  
19 not belong to any of the trade associations in CEMT and who  
20 will need to be reached with information about what the  
21 rules are and how to comply. This will involve more costs  
22 for them and for those who are trying to educate them.

23 As to benefits, CEMT believes that a flexible



1 performance-oriented training requirement will benefit both  
2 operators and miners with improved health and safety and  
3 reduced costs and downtime.

4 In sum, with the exception of the concerns raised  
5 today and those to be raised in our written comments, CEMT  
6 is very pleased with MSHA's proposed rule. We think that  
7 cooperative process that produced this proposal has been a  
8 win-win proposition for all the parties involved, including  
9 industry, MSHA, and labor. We hope the same spirit of  
10 cooperation will carry through to the final rule and beyond.  
11 Thank you.

12 MS. ALEJANDRO: Thank you, Mr. Prillaman. I've  
13 got a question or two, and others up here with me will, as  
14 well.

15 MR. PRILLAMAN: All right.

16 MS. ALEJANDRO: In your comment that deadline for  
17 completion of new-miner training should be -- I guess, a  
18 coalition member earlier on in one of the earlier hearings  
19 indicated that the position was that it should be 60 working  
20 days. What is the definition of 60 working days? Are those  
21 the days that the individual miner actually works, the days  
22 that the operation actually works, Monday through Friday?

23 MR. PRILLAMAN: Well, I had understood that it was

1 the days that miner actually worked.

2 MS. ALEJANDRO: The individual miner?

3 MR. PRILLAMAN: We can see the concern with that,  
4 because if he's laid off for three months, that doesn't make  
5 sense.

6 MS. ALEJANDRO: Well, I mean, it just seems like  
7 it would present both compliance and enforcement --

8 MR. PRILLAMAN: Yes. This is --

9 MS. ALEJANDRO: -- complications.

10 MR. PRILLAMAN: -- this is an issue that's  
11 probably still being hashed out somewhat within CEMT, so  
12 maybe I should speak for the Lime Association when I  
13 say --

14 MS. ALEJANDRO: Okay.

15 MR. PRILLAMAN: -- that some sort of compromise on  
16 this would probably be calendar days, but a little bit  
17 longer than 60 days so that it would encompass, you know,  
18 something like 90 days. If you look at 90 calendar days,  
19 somebody who's working full-time is going to work, you know,  
20 60 or so days in that period of time.

21 MS. ALEJANDRO: Okay. All right.

22 MR. PRILLAMAN: So that would be one way of  
23 splitting that issue.

1 MS. ALEJANDRO: Okay. That's all I have. Robert,  
2 do you have any questions?

3 MR. ALDRICH: No.

4 MS. ALEJANDRO: Rod?

5 MR. BRELAND: Yes. I have a few, Mr. Prillaman.

6 MR. PRILLAMAN: Okay.

7 MR. ALDRICH: On the effective date, you were  
8 proposing one year, based on the fact you think it'll take a  
9 year for all the mining operations to gear up  
10 and --

11 MR. PRILLAMAN: I think that -- yes. I think that  
12 the level of knowledge of what's going on is not as wide as  
13 we would hope. You have to remember there are a lot of very  
14 small operations that are going to be swept into this rule  
15 that, as I mentioned -- many of them aren't even members of  
16 the trade associations that are here. They are going to  
17 have to be reached with this information. And indeed, a lot  
18 of those that are our members are going to require time to  
19 do this. The ones that are larger, you know, they probably  
20 have training programs in place. It won't take that long to  
21 switch them over, but for the great mass of small aggregate  
22 operations and other small mining operations, I think a  
23 significant amount of time is going to be needed.

1           MR. BRELAND: Aren't the associations, though,  
2 aren't they widely broadcasting this information, as well,  
3 and sharing it presently?

4           MR. PRILLAMAN: They are. They are, but the time  
5 for penetration -- and also I'm hoping that there's going to  
6 be efforts to help people get plans that are good solid  
7 plans in place before the enforcement date comes, and that's  
8 going to take some time. They have to be developed; they  
9 have to be disseminated.

10          MS. ALEJANDRO: Yes. I mean, I think that MSHA  
11 clearly recognizes that getting the rule out is one part of  
12 it, but a probably more difficult part is going to be the  
13 implementation and making sure that everyone knows what  
14 their obligations are and assisting those who need it. And  
15 I think there are a lot of small operators who are going to  
16 need a significant amount of assistance, either from MSHA or  
17 state grantees or even larger operators.

18          MR. BRELAND: Okay. Thank you. Now, another  
19 issue you brought up -- I was trying to stay up with you;  
20 you were going pretty fast on some of them -- but you had  
21 mentioned the legal responsibility for hazard training.

22          MR. PRILLAMAN: Yes?

23          MR. BRELAND: You believe it should be entirely

1 the contractors'?

2 MR. PRILLAMAN: I think, in practice, most of the  
3 time that training for contractors that don't have a  
4 significant presence at the site, it will probably be  
5 delivered by the operator. But we think the responsibility  
6 ought to be with the employee's employer if they are a  
7 contractor who works at the site.

8 I particularly feel strongly about that when the  
9 contractor is a miner that meets the definition of a miner.  
10 A prime example would be someone who does -- a contractor  
11 who comes and does blasting. We think they ought to get  
12 their hazard training from their own employer.

13 Now, we think that the operator of the site should  
14 have an obligation to provide information to that contractor  
15 about what are the site-specific hazards, which would then  
16 be part of the training would be given to the specific  
17 miner. But a lot of times contractors will use different  
18 employees at different times to do the work, and we think  
19 that they should have that primary responsibility.

20 MR. BRELAND: What if a contractor's not getting  
21 the hazard training to their employees and their employees  
22 are, in fact, affecting maybe the safety of your employees?

23 MR. PRILLAMAN: Well, I certainly think that a

1 prudent operator would make sure that they are getting it.  
2 The question is who has the responsibility to do it and to  
3 pay for it. We think that the employer should. Now, I  
4 think in most cases, operators will insist that they -- that  
5 the contract employees have it before they are allowed on  
6 the site, but the issue is who's responsible for giving it,  
7 who has that ultimate responsibility under the law?

8 MR. BRELAND: From this particular regulation, it  
9 seems that the operator -- in the past at least, MSHA has  
10 expected the operator to ensure that all miners that come on  
11 the site have received site-specific hazard training. But  
12 you're asking for this one to be different from the  
13 standpoint that the operator wouldn't be -- the mine  
14 production operator wouldn't be responsible for --

15 MR. PRILLAMAN: Yes. The principle that we're  
16 adhering to is that employees should get their training from  
17 their employers.

18 MR. BRELAND: Okay. What about, like, service and  
19 maintenance people, how do you see them as definition of  
20 miner?

21 MR. PRILLAMAN: Well, there's obviously some level  
22 at which, where the training is something like signage, or a  
23 card, or something like that, that it's going to be provided

1 just -- umbrella. A lot of these people aren't going to  
2 require training under the proposal that you --

3 MR. BRELAND: For service and maintenance people  
4 that come in and do your --

5 MR. PRILLAMAN: In the mining area?

6 MR. BRELAND: -- or, yes, in the mining area?

7 MR. PRILLAMAN: Well, we think they too -- their  
8 employers should have the responsibility. I mean, I think  
9 it's a stronger argument if they are miners than in -- and  
10 it's more likely that the training for those people would  
11 actually be physically provided by the operator. The  
12 question is who is responsible for making sure that it's  
13 provided.

14 MR. BRELAND: There's some discussion about the  
15 miners too, and the definition of miners. Again, I'm just  
16 trying to get more understanding of what people are  
17 proposing. But you're saying, CEMT is saying -- their  
18 proposal is that a miner is strictly involved in production,  
19 extraction, period. That's no support activity. That's not  
20 maintenance. That's not --

21 MR. PRILLAMAN: Right. Well, that's how we read  
22 the -- that's how we read the proposal. I mean --

23 MR. BRELAND: That's your position as well?

1 MR. PRILLAMAN: -- we think that's pretty good.

2 Well, I should say that we like the proposal. We're a  
3 little concerned about some language in the preamble about -  
4 - I think the example is given of some construction workers  
5 who come onto the site and are building a new crusher.

6 We don't think those people are involved in mining  
7 activities, because there's no -- because they're not -- a  
8 crusher's not operational. We think a better example would  
9 be someone like a blaster. That's someone who is actually  
10 performing true mining operations, even though they are a  
11 contractor.

12 MR. BRELAND: Well, I believe in the present  
13 program policy manual there's, like, nine examples of  
14 contractors that typically fit that, but that would include  
15 actually people that do haulage.

16 MR. PRILLAMAN: Yes.

17 MR. BRELAND: So --

18 MR. PRILLAMAN: I think --

19 MR. BRELAND: -- so would you consider people that  
20 do haulage miners?

21 MR. PRILLAMAN: Well, I haven't really -- I would.

22 MR. BRELAND: Okay.

23 MR. PRILLAMAN: But I don't want to speak for CEMT



1 on that. That's not something we've discussed, but I think  
2 that someone who is hauling in the mining area of the  
3 mine --

4 MR. BRELAND: Okay. Thank you. And then, you  
5 also talked about -- you mentioned something about the  
6 training plan and, near the end, you were going kind of  
7 fast, so I'm not sure I understood you. You didn't think  
8 that a miner should be able to trigger a review of the  
9 training?

10 MR. PRILLAMAN: Yes. Well, not that he shouldn't  
11 be able to trigger a review. We don't think there should be  
12 any requirement for an advance-approval process. We just  
13 think it's an unnecessary complication.

14 The way it's set up in the proposal is that you  
15 don't have to submit your plan for approval, although you  
16 can, but if the miner or miner's representative insists,  
17 then you have to submit it for approval. It has to be  
18 approved. We don't think that's necessary. If the miner  
19 doesn't like the plan, all he has to do is call up MSHA and  
20 say, "Hey, my employer has a plan that doesn't meet the  
21 regulation. Come and inspect." I don't think he really  
22 gets anything particularly out of requiring it to be  
23 approved in advance.

1           We just think it's an unnecessary complication.  
2   He still has the ability to go directly to MSHA and say,  
3   "Hey, I don't like this," at any point, because you have to  
4   give the plan to the miners.

5           MR. BRELAND: I think at one of the earlier  
6   sessions -- and I refer to my good friend, Kevin, here --  
7   that I think he said that was a little bit like the bogeyman  
8   in the closet that there might be a problem perceived more  
9   than real, that if -- I think the intent of the miners being  
10  involved in the review and the training plan is trying to  
11  get the best training plan for all in the development of it  
12  --

13          MR. PRILLAMAN: I guess I have no problem with  
14  that, except I'm concerned about a place where you might  
15  have some adversarial relationships and you're going to tie  
16  up the plan, whereas I think it would be better to let the  
17  operator develop the plan, give the plan to the miners, and  
18  if the miners -- you know, they can participate and have an  
19  opportunity to comment on the plan, but if they don't like  
20  it, rather than prevent it from getting approved, they  
21  should just go to MSHA and say, "Hey, we don't like this  
22  plan."

23          MR. BRELAND: Well, you know --

1           MS. ALEJANDRO: Yes. I mean, I don't think it's a  
2 situation where the miners would be preventing it from  
3 getting approved. It would be in front of, I mean, a  
4 neutral arbitrator. I don't know whether that's the right  
5 term, but if there are issues that cannot be resolved  
6 informally, there is a mechanism for miners and their  
7 representatives to be involved in the process and let their  
8 concerns be known to MSHA, so that that can be addressed in  
9 some fashion in the plan, before it's finalized or  
10 implemented.

11           MR. PRILLAMAN: Well, I just think that that's an  
12 unnecessary complication. It's going to create an interim  
13 period where the status of your plan is uncertain, which  
14 could be a problem. It just seems to me that it would be  
15 better to have that period of time where they can comment on  
16 the plan, they see the plan, and if they still have those  
17 issues that you're talking about, well, MSHA can get  
18 involved on the inspection end. It's sort of like this is  
19 one of those issues where you have a choice between whether  
20 you want a safe harbor, approval in advance, or do you want  
21 the flexibility and a simpler process? And we think that  
22 the processes is the advantage.

23           Rather than knowing for sure that your plan is

1 approved, you sort of have to go ahead, but in the -- and  
2 take the risk that in an inspection, someone may not like  
3 it. But we think, in general, across the industry, that  
4 that will cause plans to get done faster and better.

5 MR. BRELAND: Okay.

6 MR. BURNS: On this issue, it just seems to me  
7 that what you're proposing, you know, isn't inclusive from  
8 the standpoint of including the miners in the process,  
9 unless it's on a voluntary basis. Part of what including  
10 that in the plan process is to let miners know that they do  
11 have this right and that they do have the opportunity to  
12 provide input. It doesn't say they have to send it for  
13 approval.

14 It also says they can submit comments to the  
15 operator, so it -- part of what this rule is doing is making  
16 it clear to all miners that they do have a say in the plan.  
17 If the rule does not say that, there are a lot of miners  
18 that will not know that they have that right, and some of  
19 them -- some of them may not even know that they have the  
20 right to say something to MSHA, that the plan is inadequate.

21 Others may feel that their back is to the wall,  
22 and their only recourse is to contact MSHA, which does not  
23 advance the process of putting together plans. So I think

1 -- I just think the way it's proposed, it encourages dialog  
2 between all the parties, the people that are proposing how  
3 they want to train the miners and the miners that would like  
4 to propose how they think they should be trained. I just  
5 think that's what the rule is promoting, rather than  
6 promoting this opportunity for somebody to hold the process  
7 up.

8 MR. PRILLAMAN: Well --

9 MR. BURNS: And I think if that does happen, if  
10 there's a rare occasion -- and I really do think that would  
11 be rare, as we have this plan approval process in Part 46  
12 now, and I'm not aware of it being used, quite frankly.

13 But if it is used on a rare occasion, I don't see  
14 where that outweighs the opportunity for -- to make sure  
15 it's clear to all miners that they have an opportunity to  
16 participate in the plan development process.

17 MR. PRILLAMAN: I guess our view would still be  
18 that it's more complexity than is needed but --

19 MR. BURNS: Okay.

20 MR. PRILLAMAN: -- even if you're going -- if you  
21 are going to do it, the one thing that I would say about it  
22 is that I don't think it would good for an operator to be in  
23 violation, because they've implemented a plan that meets the

1 standards that -- at least the operator believes meets the  
2 standards, while this process is going on. I mean, you  
3 could certainly write it to say that the plan is  
4 conditionally approved, and it could be disapproved through  
5 this process.

6 MR. BRELAND: Well, there's time frames that are  
7 being built into the proposal that allow for time for,  
8 obviously, the operators to submit for review to the miners;  
9 miners to have time to review and make comments.

10 So that process is in there, really, and really,  
11 and if it goes to a review -- to MSHA for review, then, I  
12 guess, as Kathy was talking earlier, you could have a  
13 neutral party basically help bring it to some sort of  
14 acceptable understanding of what would be necessary. I  
15 think Kevin's right that the intent is inclusiveness, and  
16 the training is for the miners. Obviously, it seems logical  
17 that the miners would be involved in the development of the  
18 training.

19 MR. PRILLAMAN: And we certainly have no objection  
20 to the provisions that require the plan to be provided to  
21 the miners, for them to have a time period to comment on the  
22 plan, et cetera.

23 It's just it's the mechanism causing a triggering

1 of a review process before approval that we don't like, so I  
2 hear your concern about wanting to get the miners involved,  
3 and we don't have a problem with that. It's this process  
4 that you can get caught up in that's --

5 MR. BRELAND: I was just really trying to make  
6 sure I understood what your concern was -- it's more that  
7 you're anticipating where there might be an adversarial  
8 relationship that can be an impedance to moving forward with  
9 the process. And you know, as Kevin said, he's not aware of  
10 -- and I'm not either. I have 23 years on the enforcement  
11 side that I didn't see that as being anything abused.

12 MR. PRILLAMAN: That's -- I mean, that's one  
13 concern. The other concern is that we wouldn't want anybody  
14 to be -- there may be a time -- as long as the time periods  
15 prevent this --you wouldn't want to say, "Well, your plan  
16 looks good, but because you're in this approval process,  
17 you're now in violation, because it hasn't been approved."

18 MS. ALEJANDRO: Well, how did that happen, though,  
19 I mean, because initially, I mean, there's going to  
20 obviously be some period of time for an operator to come  
21 into compliance, and that process would be going before the  
22 -- MSHA starts to enforce.

23 And then, once a plan is in place and the operator

1 decides they want to revise it, I mean, the plan that is in  
2 place would remain in place until it's superseded by a new  
3 plan, so, except at the initial stages --

4 MR. PRILLAMAN: Well, what that would mean is that  
5 you couldn't make the changes that you propose to make in  
6 your revised plan until you went through this -- till you  
7 got it approved by MSHA --

8 MS. ALEJANDRO: Right.

9 MR. PRILLAMAN: -- which --

10 MS. ALEJANDRO: But you're not in a situation  
11 where you don't have a plan, where an operator would be in a  
12 position to be cited for not having a plan, because this  
13 process is ongoing. I mean, it might delay implementation  
14 of some changes that will be beneficial.

15 MR. PRILLAMAN: Right.

16 MS. ALEJANDRO: But on the other hand, I mean, an  
17 operator's not going to be in a position where he's going to  
18 be cited for not having an approved plan. So, I think we  
19 understand your --

20 MR. PRILLAMAN: Okay.

21 MS. ALEJANDRO: -- concern about that provision.

22 MR. BRELAND: Okay. The definition of supervision  
23 to you, it seems like you felt that the way that's written,



1 that means that you're tying up a company's supervisor to  
2 supervise the actual training?

3 MR. PRILLAMAN: That's --

4 MR. BRELAND: And I guess my question would be, or  
5 suggestion would be, if you had clarification -- if you get  
6 a qualified, experienced person that's in the observation  
7 of -- and not necessarily supervision -- we've had some  
8 other people bring that issue up --

9 MR. PRILLAMAN: Well it's --

10 MR. BRELAND: -- maybe that has a connotation  
11 that --

12 MR. PRILLAMAN: -- it pretty clearly says, at  
13 least in the preamble, that this person could be doing  
14 nothing but supervising that one trainee. And if you read  
15 the language literally, you couldn't even be supervising  
16 three people, so it's extremely narrowly worded. Maybe,  
17 that's not really intended. And it's -- the language, the  
18 term "close supervision" appears in, I think, three places.

19 The first one is when it talks about, you can  
20 allow some work to be done as part of the initial free work,  
21 new-miner training, as long as that's done under close  
22 supervision. That's where it actually says that close  
23 supervision means that the person is -- that the supervisor

1 is not doing anything but supervising the person. But we  
2 still think that's too narrow, even for that setting,  
3 because the work that the person is doing may not be really  
4 worthy of that level of supervision. But it's also used in  
5 two other places. It's used in task training, and it's also  
6 used and it talks about that if a new miner hasn't received  
7 all of his 24 hours of training yet, that he must work under  
8 close supervision for the 60 days, or whatever period.

9           And that just can't mean that there's someone  
10 who's doing nothing but supervising the person, so we think  
11 there needs to be -- we think that definition needs to be  
12 broadened, but it also needs to be clarified. I don't think  
13 it really means the same thing in those two places.

14           MS. ALEJANDRO: I mean, what's your feeling as far  
15 as they used the term "under task training"?

16           MR. PRILLAMAN: Well, I mean, in general I think  
17 that the term "close supervision" ought to be defined to  
18 mean attentive supervision that's commensurate with the  
19 risks of the work being performed. You know, somebody is --  
20 if the job that someone is doing is sweeping a floor, that's  
21 very different from someone operating a crusher, so the  
22 amount of supervision that's appropriate is going to vary,  
23 depending on the task. And we think that ought to be

1 recognized in the rule.

2 MS. ALEJANDRO: Yes. I'm just thinking that in  
3 our -- in the context of task training that that's an  
4 instance where you might want -- I mean, you probably would  
5 want someone to be right there keeping their eye on the  
6 person who's going through the paces of learning how to do a  
7 new task.

8 MR. PRILLAMAN: Well, again, it depends on the --

9 MS. ALEJANDRO: It depends on the level of the  
10 hazard.

11 MR. PRILLAMAN: Yes, it depends on the task. So,  
12 this is sort of a general issue of task training, as a new  
13 task can be anything from driving a huge haul truck to  
14 working with a pick and shovel.

15 MR. BURNS: Well, would you be able to -- would  
16 CEMT be able to submit comments clearly clarifying, because  
17 this --

18 MR. PRILLAMAN: Yes.

19 MR. BURNS: If I remember correctly, this term  
20 came right out of what was submitted to MSHA in part -- in  
21 your --

22 MR. PRILLAMAN: It's --

23 MR. BURNS: -- Part 46.

1 MR. PRILLAMAN: -- the elaboration of it in the  
2 preamble that's the problem for us.

3 MR. BURNS: But that's what I'm asking.

4 MR. PRILLAMAN: Yes. That'll be --

5 MR. BURNS: It is a term that we pulled right out  
6 of that draft and if -- what I'm asking for is what you feel  
7 the proper clarification --

8 MR. PRILLAMAN: Yes. That'll be in our comments.

9 MR. BURNS: -- and your viewpoint, and not that  
10 we're going to necessarily --

11 MS. ALEJANDRO: Right.

12 MR. BURNS: -- I would like to see what --

13 MR. PRILLAMAN: Okay.

14 MS. ALEJANDRO: And actually --

15 MR. BURNS: -- you meant by that.

16 MS. ALEJANDRO: -- the steelworkers express some  
17 concern about the uses of that term, but for reasons that  
18 are slightly different from what you're raising.

19 MR. BURNS: Yes.

20 MS. ALEJANDRO: So, I mean, obviously that's a  
21 term that we probably want to take a closer look at.

22 MR. PRILLAMAN: We'll give you more detail on all  
23 these in our written comments.

1 MS. ALEJANDRO: Okay.

2 MR. BRELAND: The fact is, I think, it's good to  
3 clarify in the preamble exactly what is meant by some of  
4 that, so if you have preamble discussion that's troublesome,  
5 then you should be --

6 MR. PRILLAMAN: Well, you have to test these terms  
7 against the real-world experience.

8 MR. BURNS: Yes. That would be good. I mean, use  
9 as many examples as you feel necessary to clarify this issue  
10 and any other issue. I mean, I'd ask all commenters to do  
11 that.

12 MS. ALEJANDRO: Yes. We need all the help we can  
13 get.

14 MR. BURNS: You're an attorney, right? You  
15 understand the --

16 MS. ALEJANDRO: Plagiarizing?

17 MR. BURNS: No. I mean, what --

18 UNIDENTIFIED SPEAKER: That's why they don't  
19 understand.

20 MR. BURNS: -- terms mean -- and how they can  
21 change --

22 UNIDENTIFIED SPEAKER: You fight over these rules  
23 forever.

1 MR. BURNS: -- as soon as possible.

2 MR. BRELAND: Also, one additional  
3 question --

4 MR. PRILLAMAN: Okay.

5 MR. BRELAND: -- on the 60-day versus 90 days and  
6 the calendar days versus workdays, two questions in that  
7 area. One, I wasn't sure that -- or I missed it anyway --  
8 if you thought there was any amount of training that should  
9 be required before miners go to work.

10 And then, secondly, you talked about the time  
11 frame and even the 90 days or 60 workdays, if somebody was  
12 working all the time, would be approaching four and a half  
13 or five months if they were working full-time. Do you  
14 really -- are you saying you think that's a reasonable  
15 amount of time to complete the other 24 hours?

16 MR. PRILLAMAN: I'm not sure I understand.

17 MR. BRELAND: The minimum time for a new employee.

18 MR. PRILLAMAN: On the first question about the  
19 training required before they begin work, we think what you  
20 have in the proposal is good on that.

21 MR. BRELAND: With no time limit, no specified  
22 minimum --

23 MS. ALEJANDRO: No minimum time.

1           MR. PRILLAMAN: Yes. But the topics, we think the  
2 approach of identifying -- I think our list of topics were a  
3 little bit different, but we don't -- we think -- that's not  
4 a -- what the specific topics are, we think your list is  
5 good. You know, how much time is needed for those topics is  
6 going to vary, depending on the kind of operations, so we  
7 agree with your approach on that.

8           We think that the topical approach is a sensible  
9 one. You know, if the topics aren't covered, then the  
10 people are going to be in violation, whatever the amount of  
11 time is. The second question, I'm not sure I understood.

12          MR. BRELAND: Well, you talked about the 90 days  
13 to complete. You thought the 60 calendar days versus 60  
14 working days and then you mentioned, well, maybe 90 days was  
15 what would be a reasonable --

16          MR. PRILLAMAN: Well, we had said 60 working days  
17 in the draft that we put it. Your proposal says 60 calendar  
18 days, and the concern was, well, working days could be -- it  
19 could take somebody all year to work 60 days. We recognize  
20 that. And again, on this one I'm not sure that CEMT has  
21 reached its view on this.

22          I'm just telling you what I think on behalf of the  
23 Lime Association is 90 calendar days would probably work,

1 because that would probably be 60 working days for most  
2 people. If you strongly prefer a calendar-day approach, I  
3 just think 60 calendar days is too short.

4 MR. BRELAND: And the operation out there that's  
5 intermittent, that might work six weeks this year, you would  
6 include that, so if they came back with the same people next  
7 year, then they've been beyond the 90 calendar days, so they  
8 would have to have had their training when they, like, start  
9 up again seasonally? So you can see there's a real -- there  
10 could be a real issue with -- some people would never get  
11 their training. A lot of people would never get their  
12 training that worked seasonal if they had that much time.

13 MR. PRILLAMAN: Well, that could be true, even if  
14 it's just 60 calendar days.

15 MR. BRELAND: That's right. It could be.

16 MR. PRILLAMAN: I don't know if there's -- I mean,  
17 that's always -- I mean, there's going to be these anomalies  
18 that are going to happen with people who only work a short  
19 amount of time. I don't know if there's any good way to  
20 address that.

21 MR. BURNS: Yes. I guess I still have a few  
22 questions on -- I guess, I'm just trying to stick to the  
23 same issues, rather than wait -- and I'll ask you about this



1 area. But it seems to me that right now under --there's  
2 five topics that are discussed that need to be addressed in  
3 this 60-day period -- or you're proposing 90 days -- many of  
4 which, you know, should be done rather -- earlier rather  
5 than later --

6 MR. PRILLAMAN: Uh-huh.

7 MR. BURNS: -- okay, like instruction on the  
8 statutory rights of miners. I mean, they should know that  
9 rather early in their careers, so that they know they have  
10 the right to refuse to work in an unsafe area or in unsafe  
11 conditions. So, I mean, I think that's something that  
12 should be done earlier, rather than later. I just want to  
13 go through a couple of these and see --

14 MR. PRILLAMAN: Okay.

15 MR. BURNS: -- what you -- and then, the review of  
16 the description of line of authority of supervisors and  
17 miners' representatives' responsibilities. That seems like  
18 that should be something that a work -- any worker would  
19 like to know. I mean, I'd like to know that when I came to  
20 MSHA, you know, what the various roles were.

21 The third one is an introduction to the rules and  
22 procedures in the reporting of hazards. Again, that seems  
23 to be something that's, you know, sooner rather than later.

1           And then, instruction and demonstration of the use  
2 and care of self-rescuers if appropriate in respiratory  
3 devices. Again, that's going to have to be done if someone  
4 is working in a dusty area or a noisy area, they are going  
5 to have to be trained how to use those before they go into  
6 those areas.

7           So, I mean, that's something that has to be --  
8 that's not something that's tied into a time period. That's  
9 more or less event activated. The only one that I can see  
10 that, perhaps, could require some time is a review of the  
11 first-aid methods.

12           I mean, I can see an operator may feel more  
13 comfortable having the state grants come in and do -- you  
14 know, someone that's very qualified to do first-aid  
15 training, to do that, and it may take time to schedule that  
16 sort of work for one individual -- say, you only hire one  
17 person.

18           I mean, that one I can see could take some more  
19 time, but all these other ones seem to be, you know, a  
20 sooner rather than later-type issue to me. And, again, my  
21 experience with deadlines is a lot of people just make  
22 deadlines. So, if we say -- if we say 90 days, there are  
23 people that will be doing a lot of things on the 89th day.

1                   MR. PRILLAMAN: Yes. I have a couple of  
2 responses.

3                   MR. BURNS: Okay.

4                   MR. PRILLAMAN: It's always hard to figure out  
5 what length of time to allow for things like this, but there  
6 are a couple of reasons why more time might be needed for  
7 some people. Number one is what you mentioned is a lot  
8 operations are not going to be using in-house trainers for a  
9 lot of these topics.

10                  They are going to be contracting with others to do  
11 the training, and they are going to want to do it on a --  
12 they are going to want to train more than one employee at a  
13 time if they possibly can. So, they are not going to call  
14 in a trainer -- and there, sometimes they are going to try  
15 to do this training on a regular schedule, so allowing a  
16 little bit more time for them to schedule that is  
17 beneficial.

18                  Another one is just the issue of when are people  
19 working. They may not -- an operation that is a little more  
20 irregular it may be more difficult to get working days to do  
21 the training within a 60-day period, so a 90-day period  
22 allows you a little bit more room to find time to actually  
23 do the training.

1           I would assume that most people will probably do  
2 the training as early as they can on these things, because  
3 they are ones that are safety issues, but there are factors  
4 that may make it difficult, especially for some smaller  
5 operations and more irregular operations, to get that  
6 training done, particularly if they have to do it on days --  
7 they really can't do it on days that the person wouldn't  
8 otherwise be working, so that's a -- that's going to be an  
9 issue for some people.

10           MR. BURNS: Okay. I think you know what I was --

11           MR. PRILLAMAN: Yes, I understand. And I  
12 understand your point, I believe.

13           MR. BRELAND: I was done.

14           MR. BURNS: You were done? One more and you were  
15 done.

16           MR. BRELAND: Well, you kept interrupting the  
17 question.

18           MR. BURNS: I think that's it. I think Rod's  
19 asked all the questions I had. The only other issue was  
20 this contractor issue. I think there seems to be -- and  
21 this is just a statement, and maybe if you can clarify in  
22 your comments more exactly what your concern is and how you  
23 feel it should be handled as far as --

1 MR. PRILLAMAN: Okay.

2 MR. BURNS: -- these contractors. I mean, I  
3 understand that there are different kinds of contractors and  
4 that some very large mines deal with large trucking  
5 contractors who really are not their contractors. They have  
6 a contractual relationship with the customer, the  
7 construction company, and then they may even subcontract, so  
8 I can see that there can be a huge disconnect in some cases  
9 versus, you know, somebody that you use on a regular basis  
10 to come in and do welding or something, and it's two people  
11 working at that company. But if you could, clarify what  
12 exactly you're talking about and how you feel that should be  
13 delivered? The other thing is I sense that there's an issue  
14 of responsibility in that there's some misunderstanding  
15 concerning responsibility for training and responsibility  
16 for conditions or violations created by a contractor that  
17 could be the result of that contractor not understanding the  
18 hazards. There's nothing in this rule that would -- that's  
19 a whole separate issue --

20 MR. PRILLAMAN: Yes.

21 MR. BURNS: -- under the Mine Act. If a  
22 contractor creates a hazard that impacts a mine operator's  
23 employees, there's nothing in this rule that says that the

1 operator can or may be cited for that violation.

2 MR. PRILLAMAN: Yes. I don't think that's really  
3 what --

4 MR. BURNS: Yes. Okay.

5 MR. PRILLAMAN: -- our concern is.

6 MR. BURNS: Okay, okay.

7 MR. PRILLAMAN: I did want to clarify one point.  
8 We do think that the owner-operator or site operator should  
9 have the obligation to inform the contractor of the site  
10 hazards so that the contractor can inform employees. We're  
11 not saying, "Well, you don't have any obligation." We think  
12 that that responsibility should run to the contractor,  
13 rather than to the contractor employees. I think that's the  
14 distinction, but we'll sketch that out in more detail in the  
15 comments.

16 MR. BURNS: Yes. I guess what I'm looking for --  
17 and this was raised, I think, in one of the public -- one of  
18 the other hearings was some effort or some good-faith effort  
19 by the mine operator to ensure or to make sure that the  
20 contractor's doing the training that they've given them to  
21 provide to their employees, and how that would be -- how  
22 that can be done, I don't know.

23 MR. PRILLAMAN: Right. I would suspect that in

1 most cases it would be done contractually but --

2 MR. BURNS: You know, just so there's no  
3 disconnect, you know, because --

4 MR. PRILLAMAN: Okay. Well --

5 MR. BURNS: -- that's what I'm asking for.

6 MR. PRILLAMAN: -- we'll wrestle with that also.

7 MS. ALEJANDRO: You have anything else?

8 MR. BURNS: No.

9 MS. ALEJANDRO: Robert?

10 MR. ALDRICH: No.

11 MS. ALEJANDRO: Thank you very much, Mr.  
12 Prillaman.

13 MR. PRILLAMAN: Thank you.

14 MS. ALEJANDRO: Ros, do you want to come up? Ros  
15 Fontaine from the Office of Standards is a little bit late,  
16 and she's part of the committee, so she's going to approach  
17 the table. The next speaker is Joe Main from the United  
18 Mine Workers of America.

19 MR. MAIN: Thank you. My name is Joe Main, J-O-E,  
20 M-A-I-N. I appreciate the opportunity to be here today to  
21 talk about something that I think is fundamentally important  
22 to the nation's miners. It's probably one of the most  
23 critical things that we can talk about in terms of those

1 that seek and plummet in the workplace of a coal mine. And  
2 there's a lot of reasons for that.

3           Before I get into the substance of what I want to  
4 talk about, there's just some observations that I need to  
5 make. I just came from a Senate hearing yesterday where we  
6 were complaining loudly about the delay in the rule-making  
7 process. And I have personally been working on rules that's  
8 been around for a dozen years now and still waiting and end.

9           And I'm just totally amazed at the speed of  
10 lightning of which this rule can go through a system when  
11 rules affecting miners who were not trained, who were not  
12 appraised of conditions in the workplace became sick, who  
13 are dying because of that, and we can't get those rules that  
14 actually would help prevent them from being put in that  
15 situation, we can't get them out. I'm just -- I am amazed  
16 by this whole process, so as I come back and I go out of  
17 that world and then I look at the world of those miners  
18 we're talking about, about the first step of them entering  
19 the mining industry and the kind of training they are going  
20 to get to try to -- the kind of preparation they are going  
21 to get to keep from getting silicosis, crushed by a piece of  
22 equipment, being exposed to a solvent that could destroy  
23 their lungs. Like, one gentleman that was with me yesterday



1 was exposed to solvent that has walking up two levels of  
2 steps is a terrible task for that individual now. Being  
3 exposed to diesel fumes -- I had one lady that was with us  
4 yesterday that's disabled from -- after breathing just  
5 ungodly diesel exhaust that's spewed out in the workplace  
6 that does make people sick.

7           And for those that don't know NIOSH has defined,  
8 at least for the underground mining sector, that through  
9 risk assessments that that diesel exhaust contains  
10 particulate matter that, based on all the compositions, all  
11 the studies that they've looked at and established in a risk  
12 assessment has found that levels that were, less than what -  
13 - or were exposed to were more than, actually, than what the  
14 levels that they looked at found that upwards of 900 out of  
15 1,000 of those miners would suffer lung cancer over their  
16 lifetime of working in the mining industry.

17           And that's sad, and that's like how do we get that  
18 information out to miners? We train them; we educate them;  
19 right. And we've got this real problem today, because we're  
20 not getting this information out, the training standards we  
21 have. So, I'm deeply troubled as an outset here when I look  
22 at this proposal as to what we're actually doing for these  
23 miners or doing to these miners as we develop a training

1 model here.

2           What is the purpose of the rule? I think that's  
3 one question that everybody has to ask themselves. If the  
4 rule is being developed to provide quality training in a  
5 structured manner to educate these miners of the real  
6 hazards they are about ready to get into as they enter the  
7 workplace and the hazards that exist as they're there for  
8 the retraining and task training, then you have to have a  
9 quality training rule that's designed with clear structure  
10 to it to make sure that those miners are specifically giving  
11 that kind of training that you desire them to get.

12           If you don't do that, what you get is poor-quality  
13 training programs that's poorly structured that ill equips  
14 the miners to understand the hazards in the workplace. I  
15 think it's just that straight and simple. When I looked at  
16 the data on the -- that MSHA had supplied with the proposed  
17 rule, I had found that according to MSHA statistics that of  
18 the 200 miners killed in surface mines, 82 percent were  
19 killed in the very workplaces that we're talking about.

20           That should be alarming to a lot of people to say  
21 we've got a serious problem here that requires serious  
22 attention. And then, I found that MSHA had concluded that  
23 the lack of training was a significant factor in those

1 deaths. So that tells us that we've got to do something to  
2 make sure that these miners have quality training that's  
3 well structured that prepares them for the dangers in the  
4 workplace. I think, again, it's that simple.

5           Now, we're not just talking about any industry  
6 here, folks, and I think we all have to realize that. It's  
7 -- we're talking about the mining industry that, by the  
8 Department of Health and Human Services findings last year  
9 and the report issued by the CDC cited the mining industry,  
10 based on deaths that occurred over a period of time, to be  
11 the most dangerous occupation in this country. And that led  
12 construction and forestry by a wide margin.

13           I need to get a copy of that, and we'll have for  
14 the record to make sure that that's available to the folks  
15 that's working on this rule. So with that background,  
16 again, it says that we've got a serious problem here in this  
17 country. We've got to come to grips with that problem.

18           One of the key issues here is that miners are not  
19 well trained enough to protect themselves from these  
20 hazards, and they are dying on the job. We don't know how  
21 many of them become sick. I mean, that's another problem in  
22 itself and that there's been a failure by the industry  
23 overall to report illnesses, which I think was flushed out

1 here about a year ago when MSHA offered a grace period.

2           And we're still waiting to get those results, but  
3 over 3,000 illnesses were reported to MSHA that were  
4 apparently free through that grace period by mine operators  
5 over a five-year period. And we do not believe that, by any  
6 stretch of the imagination, that is inclusive of all the  
7 illnesses that's out there. That's another problem in  
8 itself, but what it's telling us is that miners are not  
9 apparently able to protect themselves from these illnesses  
10 that are occurring in the workplace.

11           Silicosis is a big one. There's a lot of  
12 publicity about it, rightfully so, and it needs the kind of  
13 attention that it's getting. It needs that kind of  
14 attention in the mind of the miner before he ever cranks up  
15 that first drill or goes out there with that first in-  
16 loader, because out there in that dusty bin before he gets  
17 exposed to that first batch of dust, they need to understand  
18 what the dangers are, what's needed to protect them, what  
19 the law is, what rights they have to seek help -- I mean,  
20 just as a simple issue.

21           Miners working around equipment, I'd sure hate to  
22 think I was sending one of my kids to a mine, and I wanted  
23 to give them a very limited amount of training and say,

1 "Okay, son, go over and run that bulldozer and, yeah, just  
2 be careful what you do. Yeah, I'll give you a general  
3 outline of how things work here and wind up having that poor  
4 boy go over a high wall, have a brake failure or a number of  
5 different hazards that can occur at a workplace that could  
6 kill him or somebody else.

7           And I think that's again, what we're talking  
8 about.

9           Would we want to put our children, our friends,  
10 our family into situations that we're creating here with  
11 this rule and have the confidence that those people who go  
12 into that environment are effectively trained and prepared  
13 to prevent hazards or prevent injury, illness, or deaths to  
14 themselves from the hazards that they run into?

15           I think that's a fair question that we all need to  
16 ask in the back of our minds. The rules as structures are  
17 flexible, as pointed out, I think to the point that they,  
18 without question, provide the less protection than those  
19 that are covered by Part 48 of the Mine Act.

20           They are, in our opinion, less protective than the  
21 standards guaranteed to miners in this country under Section  
22 115 of the Act. The proposal which amends Part 48 is  
23 so-called more performance-oriented than what Part 48 is,

1 and I think that is, too, to the extent that it takes away  
2 protections and opportunities for quality training that  
3 miners have both under the current application of Section  
4 115 of the law and under Part 48. Now, while one may argue  
5 that since MSHA did not have the -- (inaudible) -- authority  
6 of specific mining operations during the period of the  
7 rider, those mines would not suffer a diminishing protection  
8 with the Part 48 or 46 Rule as proposed. One cannot  
9 successfully argue that the standards don't diminish the  
10 protections guaranteed under Part 48. They do.

11           The other discussions, I think, that need to be  
12 had, too, with respect to the impact of this rule, even if  
13 you start pursuing the first line that I laid out, which is  
14 the rider not applying, I think there are some serious  
15 questions as to whether or not that theory could ever hold  
16 water.

17           And for instance, if a miner wasn't training as  
18 required by Part 48 working at one of these sites where the  
19 rider applied and that miner was injured, does that miner  
20 have a right under the process of law to lay claim to that  
21 standard existing of which was violated by their employer of  
22 which he suffered or she suffered damage that they could use  
23 as a rule of authority? The answer is, absolutely yes.

1           The only thing the legislation did was to bar  
2 MSHA, the Agency, from enforcing that standard, so there is  
3 a legal standard that's been in place for some time that has  
4 other applications.

5           Now, if a miner was working at a work site where  
6 the prohibition was in place and that miner had a collective  
7 bargaining agreement, would not that miner go to that  
8 employer and say, under our collective bargaining agreement,  
9 there's this law that's in place of which you, employer,  
10 have an obligation to provide me at this work site, and if  
11 you do not do that, you're in violation of our collective  
12 bargaining agreement. Sure, we do that all the time.

13           As a matter of fact, through the collective  
14 bargaining process, there is many, many times that there's  
15 claims laid to laws, whether it be to mine to health safety  
16 laws, wage-an-hour standard laws, other laws of which the  
17 agencies are never called in to enforce.

18           It's the mere fact that there is a piece of  
19 standing legislation or law that is the decider of the case,  
20 and you don't need the Agency to be called in. So, I think  
21 there's some clear problems here, with respect to this whole  
22 idea about the no diminishing of this standard.

23           And I think that the Agency has absolutely not

1 cleared the air on exactly what their position is as to why  
2 this does not diminish the standard. And I think before  
3 this rule's done that the Agency has to come forth with  
4 their clear position why.

5 I think, absent that, absent a clear reasoned  
6 position here that this standard is probably going to be  
7 subject to a legal test because of all the ramifications  
8 that's created by the rule, comments were noted in the  
9 preamble that some suggest that any plan which complied with  
10 the minimum requirements of Section 115 of the Mine Act be  
11 considered approved by the secretary. We surely do not  
12 support that view.

13 The Mine Act has a greater intention than that,  
14 and I think that that has to be realized, or we wouldn't  
15 wind up with the standards in Part 48 that we have. And if  
16 the intent of the rule is to provide quality training to  
17 protect miners from hazards, surely plans should be more  
18 substance than paper-compliant.

19 I mean, what are we doing here? Are we creating a  
20 quality training program? Are we creating some little  
21 vehicle to just clear some legal path, so we can say it  
22 meets the test in law? And I think as I've read the rule  
23 and the discussion on the rule, I'm deeply concerned that



1 the path that was chose here was a matter of convenience, as  
2 opposed to a matter of substance as far as providing  
3 structured quality training to miners. Part 46 would not  
4 require training plans to be submitted to the Agency and  
5 only contains generalized plan requirements. And this is a  
6 major department in Part 48, and these are things that we're  
7 talking about that's in the current Part 48 Rule that are  
8 absent from the proposed Part 46, a plan just simply not  
9 required to be approved by the Agency under Part 46.3 in  
10 miners and representatives of the miners.

11 And the representatives of mines, where they do  
12 exist, would have to file a plan of action to even cause  
13 that to occur. I was a little disturbed this morning to the  
14 debate that I heard, which gets me more concerned about  
15 where this whole training road is heading for when I hear  
16 the head of the coalition that apparently helped develop  
17 this talk very openly about wanting the preclusion of miners  
18 and miners' representatives from the plan approval process.

19 I mean, I think that's totally outrageous, but it  
20 makes me worry about what the intent may be to do with this  
21 rule. I think the Mine Act has a clear underpinning in that  
22 it clearly wanted miner reps' participation.

23 It clearly wanted miner participation in the

1 process and to have the industry or those representing the  
2 industry proclaiming that that's not necessary, I say to  
3 those families of 200 people that died in this mining  
4 industry, I think they think it's darn important, and they  
5 would probably would have liked for their loved ones who  
6 have been since, or have since left this earth, to have had  
7 an opportunity to have had some involvement. Maybe, they'd  
8 be alive today, yet, at mines where there is no miners'  
9 representative -- and let's all get serious with each other  
10 -- we know this industry, I think, for those that's been  
11 around for quite some time, we have a lot of mines where  
12 miners are just intimidated and scared to death to speak out  
13 about anything, and if one thinks that some of these small  
14 mines where they are dominated by an employer that does not  
15 tolerate any talking back, as the saying goes, or any  
16 challenging, if there's anybody in this room thinks that  
17 those miners are going to say, hey, I'm filing a complaint  
18 with MSHA over here; I want this plan approved.

19           To even trigger a plan approval, now I want to  
20 talk to you because you may know more about what's going on  
21 in the industry than I do about some of these operations,  
22 but I can tell you that is a real problem in this industry.

23           And I think the design of this whole rule by

1 passing an approval process is going to eliminate any  
2 ability in many cases of MSHA to have any control of  
3 guaranteeing quality training to miners, because if you just  
4 follow that simple lay-out of the plan in those five  
5 generalized areas, that means absolutely nothing about the  
6 substance of the quality and the structure of that training,  
7 and it flies through and they don't have that miner  
8 objection to it or that miner's rep to it, that plan's in  
9 place.

10           And I don't think this follows clearly, in any  
11 way, shape or form, what the intent of the Mine Act. And I,  
12 with all due respect, believe that it just totally undercuts  
13 the provisions under Part 48 that demands that that plan be  
14 approved by MSHA. As a matter of fact, the plan process  
15 even skips any evaluation of plan provisions, as well.

16           Under Part 48, there's provisions that require  
17 scrutiny by the district manager under the current rules to  
18 make sure that those plans are quality plans, to make sure  
19 if there's any revisions that are needed, they get done  
20 before that plan gets approved. That whole evaluation  
21 process is absent from this rule when you go straight from  
22 the operator to the implementation of the plan, the  
23 provisions of Part 46.4 (d), which allow various training

1 methods including innovative training methods and  
2 alternative training technologies.

3           There's a lot of questions as to what would fit  
4 this bill. I don't know what those are, and I don't think  
5 anybody sitting here at this table knows what those are  
6 going to be as they are applied two or three years from now.  
7 And it's sort of like taking this rule into such flexibility  
8 mode that's totally in this. And it's, you know, sort of  
9 like the kind of training that can be given the flexibility  
10 there.

11           I'm deeply concerned about that for a lot of  
12 different reasons, but one in particular, and I see that the  
13 rule would give the mine operator the right to substitute  
14 training with OSHA training, with other state training,  
15 other federal training programs. And I go back to that  
16 basic miner who's getting ready to go to this mine, work at  
17 this mine, and it's like what is it that that miner really  
18 needs to know.

19           That miner really needs to know about the hazards  
20 in that workplace of which they are about ready to be casted  
21 into, and they need to be educated on their rights, not  
22 under OSHA law, but under the Mine Act. They need to be  
23 appraised of the protections they have, not under a state

1 mining law or a OSHA law, but the laws that apply  
2 particularly to that mine.

3           They need to know about the hazards, not that it  
4 applies maybe if they are working at a cement or a gravel  
5 pit about the hazards associated with erecting the piece of  
6 steel at, you know, in a building. You know, they need to  
7 know about the hazards associated with that -- working in  
8 that pit. They need to know about the silicosis problems.

9           They need to know about working around equipment,  
10 so I think that what's set up here is a very dangerous spin  
11 that allows, out of convenience, not quality for those  
12 plans, that training plan, the training programs to be so  
13 inferior that it may mean that they mean nothing to that  
14 miner.

15           And I think that's wrong if we're after a quality  
16 plan that's well structured that really educates that miner  
17 on the true hazards and things that they need to know. The  
18 current standards require in the process that if MSHA  
19 determines that there's something missing in that plan,  
20 under Part 48 you can fix that. There's provisions there to  
21 do that.

22           In the review process in both the underground and  
23 the surface standards, under this rule there is no such

1 animal, and I think that is the lesser protection of what  
2 miners have under the current laws as they are applied under  
3 Section 115 of the Mine Act.

4           And why is that important? Well, if you have a  
5 fatality at a mine site, if you have a situation where  
6 miners are exposed to a health hazard or a number of other  
7 things, it would be more than nice to have MSHA have the  
8 opportunity to go in to say, hold it, Mr. Operator, Ms.  
9 Operator, we're going to revise this plan to make sure these  
10 people are trained so this doesn't happen again.

11           Or if they are exposed to chemicals or solvents in  
12 the workplace, whoa, we've, you know, we've had these  
13 illnesses here. We're changing these plans. You know,  
14 we're not going to allow you to just continue this plan, a  
15 training plan that does not address these problems. There  
16 has to be some control there. How will MSHA enforce this?  
17 As I read through the whole rule, I was left with the tunnel  
18 difficulty of what MSHA's planning on doing to go in and  
19 enforce this.

20           Enforce what? There's such a moving target that's  
21 been established here in so many areas with the flexibility  
22 and with the enforcement guys would probably have to chase  
23 their tails around for a week just to try to figure out what

1 they thought the standard may be, what the training may have  
2 been, how it was supposed to have been given, who it was  
3 supposed to have been given by.

4           The way that the whole scheme is designed, it  
5 appears that it's designed to provide an opportunity for the  
6 mine operator to run their operations with very little  
7 interference or as less interference as possible,  
8 accommodating the production over the interest of the miner  
9 being fully and effectively trained. And I am deeply  
10 concerned about the, you know, the whole tone of the rule  
11 that seems to accomplish that.

12           As far as not mandating formal instruction of  
13 training, I think that's a real problem. We have enough  
14 problems with the certified program under the Mine Act, and  
15 I was just informed of a story yesterday of a situation we  
16 had up in Pennsylvania where even with a certified  
17 instructor program, the certified instructor apparently  
18 decided they were going to do something else while miners  
19 were being trained.

20           So, they put on some videos and I forget what the  
21 first one was, but it's "Braveheart" I think was the first  
22 training session they got, and the second one  
23 happened to be an x-rated flick. And this, as I understand,

1 had been turned over to MSHA. And this is with the  
2 certified program, okay, where there is some more  
3 responsibility.

4 Now, what do you do -- how do you deal with a  
5 competent-person training program? I mean, I'm lost here.  
6 I think in this situation, hopefully, MSHA does the right  
7 thing and pulls the certification here of an instructor who  
8 clearly violated the law.

9 But how do you deal with a -- if your interest is  
10 making sure that you have quality people giving that  
11 training, and you find out that you don't have quality  
12 people there that really can't communicate, can't package,  
13 can't put the information together, how does the Agency deal  
14 with that? I think your hands are tied.

15 We're not requiring formal hazard training invites  
16 increased training contractors to take over workplaces, and  
17 as I read through that rule, an interesting thing struck me.  
18 And unless I'm reading it wrong, which when I read all the  
19 orders the way they are, it appears that to satisfy hazard  
20 training at a work site, you can post signs.

21 That's the way I read it, so hazard training is  
22 the people being formally advised of all the hazards.  
23 There's a sign over there tells you this; there's a sign



1 over there that tells you that. There's a sign over there;  
2 read them and, you know, make sure you comply with those.  
3 Hazard trained; okay. Here we go.

4           Is that what we want to do for hazard training at  
5 mines? I mean, is that how we want to prepare people coming  
6 on to be exposed to the hazards in the most hazardous  
7 workplace in this country? I think it's a little bit  
8 outrageous.

9           The tie-in with the contractors, as I understand  
10 it, if the contractor does not have experienced miners, the  
11 contract employers don't have experienced-miner training  
12 under 46.11 (e), hazard training would be required. If they  
13 have it, it isn't required.

14           Now, when they get it, there's some debate here, I  
15 guess, about who is going to actually give the training,  
16 although the preamble gave some discussions about allowing  
17 the contractor through the operator to actually, you know,  
18 provide the instruction.

19           And that may make some sense in a real-world  
20 situation, but at the end of the day when I put all these  
21 pieces together, as I see it, what it means is if those  
22 people come on and they don't have the new experienced-miner  
23 training, they could get hazard trained, which is the sign-

1 reading and willing to work. Now, there's this question  
2 about supervision, too, working with a miner that ties into  
3 all this, but in the real world, you could get around a lot  
4 of training costs and training programs if you decided to  
5 use that approach, which at the end of the day you may have  
6 a lot of contractors on the work site replacing, you know,  
7 more well-trained miners that would otherwise be there if  
8 you had a sound training program that set that as the basis.

9           And as far as the time that it would take to train  
10 these miners that are new, I think there's two parts to that  
11 question. The first part is could any miner be cast in this  
12 most unsafe place in this country without having the 24-hour  
13 training?

14           If you look at the Part 48 Rule, the answer is  
15 absolutely not, the standard that is required to be given to  
16 those miners before they are cast into that unsafe and  
17 unhealthy environment. Why? All the reasons I've  
18 described, all the hazards in the workplace, the high death  
19 rates, you know. This is the most dangerous occupation in  
20 the world.

21           Why are we considering saying, okay, this sector  
22 here, we're going to treat them differently and we're going  
23 to let those miners be cast into this unsafe workplace? I

1 have a difficult time from a health and safety professional  
2 to understand what is the difference from this human being  
3 to this human being over here exposed to some of the same  
4 general kinds of hazards that miners are now covered under  
5 the Part 48 regs, so I believe that that should not be  
6 permitted.

7 I believe the law has been sound through the  
8 course of time, and I worry about all these things that are  
9 happening here being impacting on the Part 48 Rule, because  
10 I can see this train coming down the track. If all these  
11 things are permitted here for these miners, what's the  
12 difference in these other miners?

13 That question is coming at some point in time if  
14 this rule would ever get through. And it would serve to  
15 undercut, I think, the whole principles and the whole  
16 protections miners have under Part 48. Retraining, it  
17 appears that retraining is a vehicle that would be applied  
18 differently than the current Part 48 Rule in a couple of  
19 important areas.

20 One area is that the topics are just flexible, you  
21 know; the flexibility is endless here. You know, pick  
22 whatever you want to do and train the folks; okay. Their  
23 training is itself modified in that, although we don't like

1 it, there's a minimum 30-minute training requirement under  
2 Part 48. It should be much more than that.

3           Again, if we're talking about some structured  
4 quality-time training for miners, as opposed to letting --  
5 yes, what did he do? Okay; we'll count that as training,  
6 paper-compliance. Yes, he did that two weeks ago. We'll  
7 take that, you know, that time and count it for training.  
8 Under our rule, it's bad enough when you take away the  
9 required topics and you take away the 30 minutes.

10           I can tell you what's going to happen throughout  
11 this industry. In a lot of mines where the rule would  
12 apply, there's going to be a documentation of just different  
13 events to satisfy not quality, structured training, but  
14 paper compliance with the rule. It's just as simple as  
15 that, and any of us that's been around the industry knows  
16 how some of these situations can occur, even under the Part  
17 48 Rules should be very easily -- should very easily see  
18 through this rule to see what we're setting up here.

19           I think retraining for any substantive purpose is  
20 gone under this proposal. There are several other issues  
21 that -- and I know of them as I go through here fairly  
22 quickly that we hope to be able to respond to the -- before  
23 the rule comment period closes. The definition of a miner

1 is one of those, and I look at how many different defined  
2 miners are we going to have in the mining industry when we  
3 get done.

4           Is this miner "a" or is this a miner "b"? What --  
5 well, how come this miner gets to have this training before  
6 they are associated with this hazard and this miner over  
7 here, well, he works at this operation; they produce this  
8 kind of product, so they don't, you know, they don't need  
9 that training. I mean, I'm confused about this. I mean,  
10 what's the logic here? It's all getting back to a purpose  
11 of coming up with some product that provides flexibility; it  
12 provides opportunities to utilize workers at the benefit of  
13 production, as opposed to using them in a way that's -- they  
14 are well-prepared for those production purposes. This will,  
15 like, use them as a process of expediency to get the mining  
16 operations done. I can't read these things any different  
17 than that.

18           We've had a basis of a training standard that's  
19 been in effect for all these years. We're about ready to  
20 just undercut the heck out of that standard. Like I say,  
21 I'll be sending more information and more comments as we get  
22 an opportunity to go through this and finalize it. And if  
23 you have any questions, I'll be more than happy to answer

1 them.

2 MS. ALEJANDRO: Thank you very much, Mr. Main. I  
3 have a general question. As I'm sure you know, I mean, the  
4 reason that the rider has been in effect all these years is  
5 because the industry was concerned that the Part 48  
6 standards were too restrictive and were inappropriate for  
7 that segment of industry.

8 And what we have heard in the course of going to  
9 our pre-proposal meetings in December and January and also  
10 at the hearings that we've held on this proposal is that  
11 there needs to be some flexibility built into a training  
12 rule that would apply to the currently exempt industries.

13 And I guess I have a general question. I mean, is  
14 it your position that a departure from Part 48 to give  
15 flexibility in all instances is going to reduce protection?  
16 Or are there some places or ways in which flexibility can be  
17 given and performance-oriented requirements be established  
18 where reduction is not going to be a problem from your point  
19 of view?

20 I mean, I think you know where I'm coming from. I  
21 mean, we're trying to accommodate the needs of this industry  
22 so that we can start to get miners trained who have not been  
23 trained. Is Part 48 the only way to go? Or are there some

1 places where flexibility is appropriate and can work?

2 MR. MAIN: In response to that question, I would  
3 say this, that you know I think that even under Part 48  
4 there's those that have expressed the view that some of the  
5 things may be too rigid, as far as the topic areas and there  
6 is a need for some flexibility in the Part 48 Rule.

7 MS. ALEJANDRO: Right.

8 MR. MAIN: Okay.

9 MS. ALEJANDRO: Right.

10 MR. MAIN: And looking at it from that end and  
11 looking at, you know, what is needed again to provide a  
12 quality training program for miners that's well structured,  
13 that's meaningful, that gets there. I think along those  
14 lines, if we're just talking about the flexibility to give  
15 the opportunity to do different things in a very meaningful  
16 way, there would not be a problem, you know, with us with  
17 that.

18 But when you take away any controls over that, any  
19 guarantees that there's going to be quality, there is a big  
20 problem. We would not support the abandonment of required  
21 training subjects under the Part 48 any more than we would  
22 under Part 44 if there was no quality-control device to make  
23 sure that miners got the right kind of topics and the right

1 kind of training.

2 MS. ALEJANDRO: You mean as far as -- I mean,  
3 maybe not necessarily setting specific topics, but having  
4 some over --

5 MR. MAIN: Yes.

6 MS. ALEJANDRO: -- umbrella mechanism in the  
7 Agency to ensure that the result is --

8 MR. MAIN: Well, I think --

9 MS. ALEJANDRO: -- receptive?

10 MR. MAIN: Yes. I would do it this way; one is I  
11 think there are specific things that have to be in training.

12 MS. ALEJANDRO: You mean, specific topics?

13 MR. MAIN: Specific topics that have to be in  
14 training. One of those is the miner's rights and the rights  
15 of the representatives so that they are fully --

16 MS. ALEJANDRO: Right. And, I mean, and those are  
17 actually requirements of the statutes.

18 MR. MAIN: One of those is also an understanding  
19 of the mandatory standards of which they are going to work  
20 with pertinent -- to their mining operation.

21 MS. ALEJANDRO: Right.

22 MR. MAIN: One of those would be very pertinent to  
23 the specific hazards of the work areas that they are going



1 into. And depending on, you know, with respect to health, I  
2 mean, I think we've grown up enough in this industry to  
3 realize we've got a lot of health problems here that there  
4 have to be issues directed, pertinent to the health  
5 exposures that those miners are faced with.

6 I mean, those are just four quick ones that I  
7 think ought to be sort of mandatory subjects, and I don't  
8 care what kind of plan that you have. And I'm not saying  
9 that's the end of that, but you know at some point then you  
10 have the opportunity to do some flexible type of training  
11 there, but you have an evaluation approval process to make  
12 sure we're just not skinning the cat here, that we're really  
13 -- and that becomes the entry approval process that's  
14 totally absent from this, you know, process, unless you have  
15 a complaint filed.

16 MS. ALEJANDRO: Okay. I mean, obviously, I mean  
17 you can get from the preamble that our objective was to  
18 allow flexibility for the training programs to be tailored  
19 to the specific operations, but what you're saying is that  
20 that is -- I mean, there's certain topics that should be  
21 mandatory.

22 Topics beyond those can be selected by the  
23 operator, but there needs to be some kind of an overarching

1 evaluation process to ensure that the plan is appropriate  
2 and effective.

3 MR. MAIN: I think the problem with the first  
4 point that you laid out, your interest to give flexibility  
5 to that mine operator in developing that plan, stops short  
6 of saying one other thing and guaranteeing that we do have a  
7 process here in place that actually guarantees those miners  
8 a quality, structured training vehicle here that's going to  
9 educate them to prevent themselves from being injured.

10 That part needs to say it throughout the rule,  
11 because I think that what the rule does is follow the  
12 lineage of the first part almost all the way through and  
13 forgets at times about that second part.

14 MS. ALEJANDRO: Okay. All right. You are going  
15 to be submitting written comments you've indicated?

16 MR. MAIN: In addition to the other several rules  
17 we're working on, yes, we're going to submit --

18 MS. ALEJANDRO: Okay.

19 MR. MAIN: -- some time to do some written  
20 comments --

21 MS. ALEJANDRO: All right.

22 MR. MAIN: -- on these.

23 MS. ALEJANDRO: Thank you. I don't have any

1 further questions. Robert Aldrich?

2 MR. ALDRICH: No questions.

3 MS. ALEJANDRO: Rod?

4 MR. BRELAND: I have a couple of short ones I'd  
5 just like verification on. You talked several times about  
6 the evaluation methods and some factors. Are your comments  
7 going to have some suggestions in that area? You do some  
8 comparisons to existing Part 48, but then you also brought  
9 up, like, a recent problem with a certified instructor.

10 MR. MAIN: The movie deal.

11 MR. BRELAND: There are some problems with the --  
12 well, there's a lot of discussion with the present rule,  
13 Part 48, on approval of instructors and approval of plans  
14 being, maybe, too automatic in some cases --

15 MR. MAIN: Yes.

16 MR. BRELAND: -- or too generic, so I guess my  
17 question here is are some of the comments you're going to  
18 have going to be relating to evaluation factors?

19 MR. MAIN: It may or may not. Well, it depends on  
20 how much time we have to devote to this rule to make sure --  
21 I mean, our problem is we see so many fundamentally  
22 structural problems here that we're going to have to respond  
23 to, I would hope to be able to follow that up.

1           But just for the record here now, which would  
2   carry as much weight as the written testimony would, I think  
3   there is a clear problem with the current Part 48 Instructor  
4   Program in that there is a -- there is the need for the  
5   Agency to do more to evaluate the quality of those programs  
6   that those instructors are giving to be able to remove  
7   people that are not providing the kind of quality training  
8   program that is intended under the Mine Act and under Part  
9   48.

10           In situations like this that I spoke of, I think  
11   there's -- anybody in their right mind would say, gee, we  
12   ought to relieve that person as a certified instructor if  
13   those are the correct facts of the case.

14           It would not be really justice to miners here, you  
15   know, and there's a lot of other problems I think we've  
16   witnessed over the years of just different little things  
17   that were done or big things that were done where miners  
18   went in to get this paid-for time and wound up being nothing  
19   more than talking about baseball or football or, you know,  
20   things that had nothing to do with training.

21           So the value was lost, and there's been times that  
22   we all know that there's been falsification of records where  
23   the training actually was not given. Getting back over to

1 the point that I raised, too, I really worry about the  
2 structure of this training program where -- and take the  
3 new-miner training or the re-training that the standards are  
4 so liberalized, how do you account for anything?

5 I mean, you go in as a training inspector, right,  
6 or an Agency training representative to try to figure out  
7 what's going on at this mine, with respect to this training  
8 program; okay. We see that Bill here has had his 8-hour  
9 training in the last 12 months. What was that training?

10 And when you get to the bottom of it, if you ever  
11 can, in some situations you find, well, we have been working  
12 with Bill Smith here, and he was teaching them about what he  
13 was doing in his work about the hazards of silicosis. And  
14 we had him, you know, on and on and on, I mean, where it's  
15 just integrated into the work process where the time wasn't  
16 quality time paid on the side to be trained. It was  
17 production time.

18 And the training was just a paper qualifier to  
19 just meet a standard of the law. I think you're going to  
20 have enormous problems with that ever guaranteeing the  
21 miners are actually properly trained. And how does a miner  
22 -- the plan's in effect; how does a miner get that plan  
23 changed? I mean, there's nothing in here that I see that

1 allows that to happen. That's another problem with this  
2 system.

3 MR. BRELAND: Okay. Thank you. Also, with all  
4 the discussion about contractors and definition of a miner,  
5 and I didn't really hear you address that in your comments,  
6 but I guess where would you define miners as it relates to  
7 the proposal?

8 MR. MAIN: Well, I think, MSHA has spent a lot of  
9 time, Rod, trying to wrestle with what the definition of a  
10 miners is and we said, thank God, we've got it figured out,  
11 what, a year ago. And I set down here and it's like, wow,  
12 that didn't work. We're trying to refigure it out again.

13 I think that, you know, the Agency has to find  
14 what a miner is, and if you get into this process of, out of  
15 convenience, trying to define miners in different ways to  
16 fit, you know, political purposes, whatever you want to call  
17 it, you risk just deteriorating this whole standard again.

18 Part 48 should be the standard. I think you folks  
19 spend a lot of time trying to figure that out. You did, and  
20 no sense recreating the wheel.

21 MR. BRELAND: Okay. Also, on the training before  
22 work, I didn't hear you say exactly. I believe you were  
23 implying that you think all training should be done prior to

1 starting work, but I didn't hear --

2 MR. MAIN: Yes, I did say that. I must didn't say  
3 it clear enough. I think the Mining Act -- actually, the  
4 way we read the Mining Act actually requires that under  
5 Section 115.

6 I think the rules that have been in effect have  
7 interpreted that to mean exactly that for, you know, since  
8 '78, and I think it is a standard that has such great  
9 importance to it that you've got to make a decision, either  
10 training means something to protect a person from harm's way  
11 or it doesn't.

12 And when you're talking about the most dangerous  
13 occupation in this country, you want those folks to have the  
14 benefit of a standard that has been defined a certain way,  
15 applied a certain way to protect miners over the years where  
16 you do not or do you not want them to have it.

17 And I think the dangers of things that I heard  
18 here this morning is that I can see -- you ever hear of what  
19 a 90-day wonder was? I was hired as a probationary  
20 employee. How many folks here were at any time in their  
21 lives? Okay. How many folks did you see going down the  
22 road? Now, that was based on a less economic impact.

23 Now, I'm setting back here thinking, gee, how many

1 90-day wonders are we creating here in the mining industry  
2 by this rule? If you follow it through, a worker who is at  
3 risk of having the cost of the employer at the end of the 60  
4 days, at the end of 90 days, 22 hours.

5 Let's assume that this one commenter was correct;  
6 they can give this so-called training, in at least their  
7 belief, in two hours. What do they need them for to send in  
8 the workplace? I noticed that in the preamble. That means  
9 that that -- that's a 22-hour risk employee at the end of 60  
10 days, pay-wise. I think this is a very, you know, troubling  
11 rule that we're setting so many precedents here that is not  
12 healthy for miner's training or the standards.

13 MR. BRELAND: Well, the existing Part 48 Rule  
14 presently allows for what's called an 8/16 split, for better  
15 terms, where they allow 8 hours initial training and the  
16 other 16 completed in 60 days, and I think that's not been  
17 something that's been -- is serving that automatically,  
18 because it requires a district manager's review and  
19 approval. But that would allow, or did allow, for a review  
20 to make sure certain kinds of subjects, anyway, were covered  
21 prior to starting of work. This is --

22 MR. MAIN: For new miners?

23 MR. BRELAND: Pardon?



1 MR. MAIN: For new miners.

2 MS. ALEJANDRO: Yes.

3 MR. MAIN: Has there been a large number of those?

4 MR. BRELAND: I think, maybe, metal sector, a lot  
5 more than in coal.

6 MR. MAIN: We need to get this, because I wasn't  
7 aware that that was even an activity ongoing, because we've  
8 basically, in our arena that I've worked with, worked with  
9 the 24-hour rule.

10 MS. ALEJANDRO: You mean, the 48 --

11 MR. MAIN: That's a pre-employment, the 24-hour,  
12 it's a pre-employment, you know, training rule.

13 MR. BRELAND: There were a lot of occasions where  
14 it was, again, it was -- it had to be requested in advance,  
15 and there were factors that are in the rule that have to be  
16 considered. And that could be the incident of the operator  
17 or the contractor, whoever's requesting that, their instant  
18 rates, the history, and so forth. So there were factors,  
19 but you may want to take a look at that when you're  
20 considering your comments.

21 MR. MAIN: I would be interested in any  
22 information that -- if I forward it right now, I can  
23 probably get it before the record goes.

1 MR. BRELAND: Well --

2 MR. MAIN: From the information act, please if you  
3 would give me that information, we do need to take a look at  
4 it.

5 MR. BRELAND: Okay. I better not ask any more  
6 questions. That's all I have. Thank you.

7 MR. MAIN: Okay. Yes. We're going to try to do  
8 some comments that gets into more detail before the record  
9 closes so --

10 MS. ALEJANDRO: Kevin, do you have any questions?

11 MR. BURNS: I guess just a couple and just answer  
12 them. I think one of your main questions or main issues is  
13 how does MSHA enforce this rule? And what happens if  
14 there's a poor training plan in place? The way it's written  
15 now under 46.3 (a), that would be the section that would be  
16 used to cite an operator for not having an effective  
17 training program.

18 And the way to change the training program would  
19 be naturally, just like any citation, the operator would  
20 have to correct that training plan in order to abate that  
21 citation. So, that is the area where we address the issue  
22 of both training plans that aren't effective or training  
23 itself that is not effective.

1 MR. MAIN: Forty-six point three --

2 MS. ALEJANDRO: (a).

3 MR. MAIN: Point three (a), yes. I'll take a look  
4 at that one, too, Kevin.

5 MR. BURNS: Yes.

6 MR. MAIN: But I think that's going to be somewhat  
7 difficult, but we'll take a look at that.

8 MR. BURNS: I mean, the other issue you raised is  
9 -- and I think this is part of being an effective training  
10 program. You know, anybody that comes to work at any place,  
11 but particularly a mine -- I mean, that's where I've been  
12 involved my entire working career -- needs to know; they  
13 need to know the hazards that they are going to be faced  
14 with at that mine.

15 We had a gentleman from Florida that talked about,  
16 you know, right now under Part 48, there's nothing in -- he  
17 was kind of joking, but I think his point was good that  
18 there's nothing in there that requires any training on  
19 alligator awareness, yet, in Florida that's -- people should  
20 know that, because they are working in areas where there are  
21 alligators. And I would want to know that myself, so I  
22 think, you know, effective training should -- the new miners  
23 should know where all the alligators are.

1           MR. MAIN: And you really need to know that when  
2 you're working for MSHA, too.

3           MR. BURNS: Yes --

4           MR. MAIN: Okay.

5           MR. BURNS: -- about alligators around. Well, if  
6 you know where some are that I don't know, I'd appreciate  
7 it.

8           MR. MAIN: You may be looking at it.

9           MR. BURNS: You know, so I think that is part of  
10 an effective program, and there's nothing that we can write,  
11 I don't think, that can tell every operator where all their  
12 alligators are, basically, and they need to do that  
13 themselves, but -- and they need to make sure that the  
14 miners know that, and that's part of an effective plan, in  
15 my view.

16          MR. MAIN: I would agree with that, but I would  
17 say, though, with respect to the structure of training, if  
18 you don't sort of force some quality time out, a lot of  
19 times you're not going to get quality time, and I think  
20 that's a real concern.

21          MR. BURNS: Yes. That issue, what you're talking  
22 about there, I believe is the problem of -- we've all had  
23 this -- where you call a meeting and it takes 5 or 10

1 minutes to start the meeting, because people are milling  
2 around doing what they need to do, saying hello to whoever  
3 it is that they haven't seen for awhile.

4           And if someone is having a 15-minute training  
5 session and they started at 9:00 and ended at 9:15 and  
6 people are milling around till 9:10, then how effective was  
7 that training? And I would agree with you there. I mean,  
8 it's --

9           MR. MAIN: Yes -- it needs to be effective  
10 training, yes. All I'm saying, if you don't have any time  
11 limits to begin, you don't even have that opportunity to  
12 have the people milling around, you know. And I just see  
13 the opportunity for a lot of these training programs to be  
14 implemented along the -- on-the-job kind of training things  
15 that, you know, paper purposes, that's what they are  
16 accounted for when there's no structured time.

17           It should be more than 30 minutes. There's  
18 absolutely no question about that, but even the 30-minute  
19 rule, when you've got that structured time go out the  
20 window, I think you risk letting any quality time all go  
21 out.

22           MR. BURNS: Okay. And I do understand what you're  
23 saying about, you know, the individual -- where there's hard

1 to document who got training, because it was, you know,  
2 maybe the guy was riding in the pick-up truck with a  
3 supervisor for 10 minutes, and somehow they plan to count  
4 that as part of their training.

5 I mean, again, I wouldn't see that to be effective  
6 training, personally. I mean, that's not what we envisioned  
7 here, and I don't think, you know, there does have to be  
8 some structure to the program.

9 MR. MAIN: If you look at the fact that there has  
10 been various, under Part 48, various criminal actions and  
11 other violations issued against this that has certified that  
12 there were miners who had absolutely no training at all.

13 MR. BURNS: Right.

14 MR. MAIN: They didn't, like, try to do -- that  
15 has been a problem that I think we have to recognize. And  
16 if you set the rules so liberal that you invite that, I  
17 think you're going to get it.

18 MR. BURNS: And the only other thing was the whole  
19 thing with plans. I mean, I kind of look at these as being  
20 one in the same as mine maps. I mean, I've seen some of  
21 these coal mines that if it exploded, then the mine map  
22 looks very nice. But, you know, underground looks nothing  
23 like what the map looks like.

1           And, again, you know a formalized plan is not a  
2 silver bullet, as you just explained. That doesn't  
3 necessarily mean that the training's going to be effective.  
4 I'm sure that plan, the issue you discussed where they put  
5 in "Braveheart," I'm sure their plan didn't call for that.

6           MR. MAIN: Kevin, if I could say something. We --

7           MR. BURNS: You know, I'm saying that's not a  
8 silver bullet.

9           MS. ALEJANDRO: Obviously, I mean, whatever the  
10 requirements may be in the rule, if we're not enforcing  
11 them, they are not going to be worth anything.

12          MR. MAIN: That's correct.

13          MR. BURNS: I think that it all comes down, you  
14 know, 43 (a) is a big part of it that it has to be  
15 effective. And one way to find -- the best way for me to  
16 find that out is to talk to the miners.

17          MR. MAIN: But under this proposal, you ain't got  
18 much to work with under 43 (a), Kevin, I'm sorry to say.

19          MR. BURNS: Okay. I'm going to look at that. I  
20 appreciate that.

21          MR. MAIN: But I did want to make it clear in  
22 terms of the legal issues that's raised here, that they are  
23 very important and very -- (inaudible.) And there has been

1 this finding, based on what we saw thus far, that it doesn't  
2 -- it does not meet the test that MSHA has laid out here  
3 that this will not diminish protections to the miners. We  
4 believe it does.

5 And we believe it does in different ways, and we  
6 would clearly like to have MSHA's position as to how they  
7 define that it doesn't, because we haven't figured out where  
8 that fits --

9 MS. ALEJANDRO: Okay.

10 MR. MAIN: -- at this stage.

11 MS. ALEJANDRO: Robert?

12 MR. ALDRICH: No questions.

13 MS. ALEJANDRO: Ros?

14 MS. FONTAINE: No questions.

15 MS. ALEJANDRO: Thank you very much, Mr. Main.

16 MR. MAIN: Thank you. We appreciate it. Thank  
17 you.

18 MS. ALEJANDRO: All right. Why don't we take a  
19 10-minute break, get back at 5 till 10.

20 (Whereupon, a 10-minute recess was taken.)

21 MS. ALEJANDRO: Are you ready? Okay; good. The  
22 next speaker on the list is Elsa Roman from the University  
23 of Texas at Austin.



1 MS. ROMAN: Yes. My name is Elsa Roman, E-L-S-A,  
2 R-O-M-A-N. I'm with the States Grants Program in Texas.  
3 The comments I'm going to make today and the suggestions I'm  
4 going to make today are based on two foundations, one of  
5 them being the experience and observation that we have had  
6 in the mining industry for the last 14 years being part of  
7 the States Grant Program.

8 And the other one is based on our perception of  
9 the reason for why this entire process is taking place. Our  
10 perception is that this process is taking place because of  
11 what has taken place in the industry over the last few  
12 years, which is an increased number of fatalities,  
13 accidents, and injuries. And based on that perception and  
14 our experience and what we read in the proposal, we see a  
15 huge gap in those two things.

16 And my comments will be just -- will go down the  
17 line based on what you asked for comments on. The first one  
18 dealing with the definition of a miner, we do suggest that  
19 the definition include persons whose exposure is frequent  
20 and regular, as in Part 48.

21 This is, again, based on the experience that we  
22 have had where people do not have to be involved in the  
23 integral part of the operation to be exposed to the hazards.

1 And we do believe these people should go through new-miner  
2 training as the people who fall under the definition of  
3 miner. We do see a difference, however, in people such as  
4 Coke vendors, drivers just coming in to pick up loads.

5           We do see a difference there where they would need  
6 only hazards training, but people who are on the mine site  
7 on a frequent and regular basis, our experience shows that  
8 they are exposed to the hazards just as the miner is, and  
9 therefore, need the same amount of training.

10           The second point on the plan approval process, we  
11 do not necessarily believe that the plan approval process  
12 has to be like Part 48. What we would like to see more,  
13 though, is emphasis on the evaluation of the training plan.

14           We do strongly suggest the inspectors review the  
15 plan as they come onto the operation, and we would like to  
16 have that -- we would suggest that an inspector review the  
17 plan the first time he or she is doing the inspection after  
18 the proposal actually takes effect. We also suggest the  
19 inspector be given authority to disapprove plans if during  
20 his or her inspection he perceives the plan not to meet the  
21 requirements as stated in the proposal.

22           We also suggest that plans be inspected on an  
23 annual basis. In keeping with the proposal under the part,

1 the annual refresher training requirement, it is suggested  
2 that operators provide training with regards to the changes  
3 that have taken place on the mine site. If changes have  
4 taken place on the mine site, and miners are being trained  
5 on those changes, then those changes have to be reflected in  
6 the training plan.

7           And the inspector should -- we believe the  
8 inspector should evaluate those training plans, with respect  
9 to the changes that have taken place. Currently, we  
10 perceive there to be a problem under Part 48 within the  
11 training plan evaluation process.

12           We -- our experience is that once the training  
13 plan's approved, it is put in a file and it doesn't come out  
14 ever to see the sun again. When people call us to do  
15 training for them, we ask them specifically what the  
16 training plan states, and they have to look for it; they  
17 have to dig for it so that tells us that these -- this is  
18 just a, you know, paperwork process. We really do emphasize  
19 the evaluation part of it to be more stringent within the  
20 Part 46 Rule.

21           On the training plan, also, we suggest that the  
22 operator does have contractors on his or her site, and we  
23 feel strongly about this. We would like to see the operator

1 -- we would like to see verbiage in the Part 46 final Rule  
2 indicating that the operator should request to see and  
3 review the training plan from that contractor and that the  
4 operator evaluate, one way or another, whether that plan has  
5 been put into effect, whether the people within the  
6 contractor's employ have actually received the training the  
7 contractor is stating they have had.

8           Currently, we see a huge gap in contractor  
9 providing training to their employees versus operators  
10 providing training to the employees. Our experience is that  
11 contractors, in general -- not all, but in general -- are  
12 just not doing the training as required. Let's see.

13           The third one dealing with new-miner training, I  
14 believe, we truly would like to see the same verbiage of  
15 Part 46 as in Part 48. However, if that does not take  
16 place, we would like to have the verbiage place even  
17 stronger emphasis in the section where it says the employee  
18 must be under close supervision of his or her immediate  
19 supervisor.

20           That person on the job, if they truly are a new  
21 employee, they've not ever been exposed to the mining  
22 industry before has a tremendous amount of exposure to risk  
23 and danger. If they are not going to get as much training

1 as they would under Part 48, then we would like to see  
2 something else take its place.

3 And what we would like to see take place is that  
4 the individual be under observation so that they do not get  
5 themselves into a situation that could lead to a negative  
6 effect. We would like to suggest that miners' rights and  
7 first-aid also be included under the instruction -- under  
8 the subjects that are required before the individual begins  
9 work.

10 And also, if the new miner is a contractor, we  
11 would like to suggest that Part 46 require that contractor  
12 provide all 24 hours' worth of training before that person  
13 gets on the site. And this, again, is based on our  
14 experience where many times the contractor is not on the  
15 site 60 days. They might be on the site 30 days, 45 days  
16 and leave.

17 And because, currently under Part 48, they do not  
18 have to comply with all of the training until the 60-day  
19 period, many employees are not getting all of the training  
20 they should have. Under task training, we suggest it be  
21 modeled after Part 48. There is verbiage under Part 48,  
22 with regards to getting trained in the health and safety  
23 aspects of the job. We would like to see that same verbiage

1 under Part 46.

2           The next point dealing with the instructors, the  
3 competent instructors, this is a point that we feel quite  
4 strongly about. We suggest instructors be required to  
5 attend a formal program of instruction to prepare them to  
6 instruct adults. Currently, the proposal states that the  
7 individual needs to have the ability, the knowledge, the  
8 experience to provide training under selected topics or  
9 under certain subjects.

10           We, in Texas, have an instructor's training course  
11 and for the last 14 years, a good 90 percent of the people  
12 coming through that course have tremendous knowledge,  
13 ability, and experience on the subject matter. Where they  
14 fail is in the ability to provide training, their skills in  
15 the training area. And, unfortunately, because those  
16 individuals are not strong in the training skills, their  
17 knowledge, their ability, their experience is not passed on  
18 to be used by others. So, we truly would like to see some  
19 type of program, formal program, that says people need to be  
20 prepared to instruct, not necessarily people who have the  
21 knowledge on the subject matter, but people who can instruct  
22 quality instruction. If the final rule stays as is, with  
23 regards to the competent person, then we would like to see

1 the final rule provide some guidance to the operator on how  
2 they should determine whether that person is competent or  
3 not.

4           What we are concerned with is that the operator  
5 appoint Susie because Johnny is not here today. We're  
6 concerned that the operator just pick someone who is  
7 available that day without regard to how able the individual  
8 is to provide training.

9           We would like a definition of a competent person  
10 to address the ability to train adults, their abilities in  
11 communication skills, their ability in writing skills,  
12 because if someone is going to be doing training, they have  
13 to do things like putting together material. They have to  
14 put together a training outline.

15           They have to put together training objectives.  
16 They have to evaluate, as is currently outlined in the  
17 proposal, whether the training was effective or not, so  
18 there are certain skills that individual has to have in  
19 order to be considered competent, at least as it's described  
20 currently in the proposal.

21           We would also like to see addressed what  
22 requirements the operator has in preparing an individual to  
23 function in this competent capacity should the individual

1 just select or choose someone or should that operator be  
2 required to provide some type of preparation for this  
3 individual to be regarded as competent.

4           We would also like to see some guidance in the  
5 verbiage on how the competent person should evaluate the  
6 effectiveness of the training should that person be required  
7 to develop a form that he or she gives to the students after  
8 the class is over. Will MSHA put together a form to be used  
9 after each training session takes place?

10           Will there be tests given after each class to be  
11 reviewed by the inspector whenever he or she is on the site  
12 to do the inspection? And also, what should be done with  
13 these evaluations? Should they be just put in a file  
14 drawer? Should they be used to evaluate whether that person  
15 maintains his or her competent status?

16           And what if those evaluations show or communicate  
17 that the students do not perceive this individual to be  
18 competent, then what options are available to the operator  
19 to be within the verbiage of the final rule?

20           If this section is left as is, some of those  
21 suggestions we have that you, the training specialist or the  
22 inspector, evaluate this competent person selected, the  
23 evaluation be made through interviews, the questions



1 regarding the training plans, how that individual provides  
2 training, what the results of the training have been.

3           We would like to see the specialist or inspector  
4 review the evaluations of the training provided. We would  
5 like to see the inspector or training specialist interview  
6 the students who have received the training. We would like  
7 to see MSHA provide this individual with material.

8           The academy does have a manual on instructor  
9 training, so if we are going to leave it as is, competent  
10 person, then we must provide the support so that individual  
11 is a competent person. We would also suggest that if after  
12 an interview the representative from MSHA believes this  
13 individual is not competent, that this individual have the  
14 authority to revoke the competent status.

15           And on this issue, last but certainly not least,  
16 we would also like to see competent be defined as someone  
17 who can provide instruction in that individual's, in the  
18 trainee's language.

19           Every year that I've been involved with the States  
20 Grants Program, I find that there are more individuals  
21 within this country who need communication in other than  
22 English, so if I am going to select a competent person, then  
23 that competent person must be able to provide information in

1 a way that the individual receiving it is going to  
2 understand.

3           Within the proposal, there's a question as to  
4 whether the final rule should give option to the operator to  
5 comply with 48 in lieu of Part 46, and we would like to see  
6 that option be provided. There are many clients that we  
7 currently have who will fall under Part 46, but are  
8 currently in compliance with Part 48, and if they had that  
9 option, they probably would elect to stay with Part 48.

10           As far as any refresher is concerned, we suggest  
11 Part 46 make annual refresher just like Part 48. Part 48  
12 has a really good list of topics and subjects. If Part 48  
13 is not adopted, then we suggest the topics suggested under  
14 Part 46 be made required and not just suggested, other than  
15 the changes that have taken place over the year.

16           There's a list of topics suggested, and we'd like  
17 to see those made required. Within the cost analysis in the  
18 proposal, one of the costs that we perceive exists but is  
19 not addressed is the actual cost of the operator having  
20 people at the training, instead of out there in the  
21 production.

22           That is the cost, other than just the meals and  
23 lodging and transportation and the training fee, if there is

1 a training fee. There's also a cost associated with having  
2 your employees sitting there in a room getting instruction,  
3 as opposed to being out in the field producing whatever it  
4 is they are producing. Those were the comments and  
5 suggestions I bring from the States Grants Program in Texas.

6 MS. ALEJANDRO: Thank you very much, Ms. Roman.  
7 I've got a couple of questions and others may, as well. I  
8 guess I'm looking for clarification. You suggested that the  
9 final rule include some provision for the plan to be  
10 evaluated or reviewed on an annual basis. Now, is that a  
11 review by the operator, by MSHA, by both? I guess I'm just  
12 looking for a little bit of detail, as far as how you see  
13 that working, how the final rule might address that.

14 MS. ROMAN: Well, we would actually like to see an  
15 MSHA representative. Of course, the evaluation has to be  
16 made by the operator throughout the year, because if there  
17 are changes throughout the year, that operator must reflect  
18 those changes on the training plan.

19 On an annual basis, however, we would like to see  
20 an MSHA representative, either the inspector or the training  
21 specialist actually review the plan and based on the annual  
22 refresher requirements, which state that you train people on  
23 the changes that have taken place throughout the year at

1 your operation, we would like to see that inspector or  
2 training specialist review, so that the plan does reflect  
3 the changes which have taken place.

4 MS. ALEJANDRO: Okay. And also, I wasn't sure  
5 exactly what your point was, as far as you indicated that  
6 you believed that contractors should receive the full 24  
7 hours of training before they begin work at a mine site. Is  
8 that what your point was?

9 MS. ROMAN: Yes.

10 MS. ALEJANDRO: And I guess I didn't understand  
11 what the rationale was for it.

12 MS. ROMAN: Well the rationale is, currently, what  
13 we've experienced is there are contractors on a mine site  
14 who are not there for 60 days. They might be there for 30  
15 days. They might be there for 45 days. They might be there  
16 for 58 days and will provide the eight hours, or sometimes  
17 not even that, and just that eight hours because they have  
18 60 days to do the rest. But if I'm not on the mine site for  
19 60 days, then they perceive that to be as a loop to get away  
20 from being -- from providing the rest of the training.

21 MS. ALEJANDRO: So, I guess your point is because  
22 the proposal requires that the miner training be completed  
23 within 60 days, that since many contractor employees don't

1 spend 60 days on a mine site, they are going to keep --

2 MS. ROMAN: That's right.

3 MS. ALEJANDRO: You know, I don't think that  
4 that's the way we intended that working.

5 MS. ROMAN: No and you don't.

6 MS. ALEJANDRO: No.

7 MS. ROMAN: And you do not intend it that way, but  
8 our experience is that's the way it's being done by --

9 MS. ALEJANDRO: Okay.

10 MS. ROMAN: -- some contractors currently.

11 MS. ALEJANDRO: Okay. They think that the -- it's  
12 60 days at each particular mine site, and if you don't,  
13 you're not there for 60 days, then the new-miner training  
14 requirement never fully kicks in.

15 MS. ROMAN: Right.

16 MS. ALEJANDRO: Okay. And then my final question  
17 is, you didn't address compliance deadlines or effective  
18 date. Do you have them? I don't want to put you on the  
19 spot.

20 MS. ROMAN: No.

21 MS. ALEJANDRO: If you don't have a position on  
22 it, then I was just wondering whether you had any feeling  
23 for how much time the mining community would need to come

1 into compliance with --

2 MS. ROMAN: Actually, we agree with what you --  
3 part of the proposal states a phased-in process. We believe  
4 a year would be sufficient time for people to come into  
5 compliance with the final rule. However, we would like to  
6 see a phased-in process where the first six months, within  
7 the first six months, operators have to have their training  
8 plan completed.

9 MS. ALEJANDRO: Okay.

10 MS. ROMAN: And then the next -- yes.

11 MS. ALEJANDRO: All right. So, the training plan  
12 requirement would kick in in six months, and then all of the  
13 training --

14 MS. ROMAN: Right.

15 MS. ALEJANDRO: -- I mean, the other training  
16 requirements, the training would be provided in, you know,  
17 whatever fashion -- I mean, whatever training would then go  
18 into effect within a year after? Okay.

19 MS. ROMAN: Yes.

20 MS. ALEJANDRO: That's all I have. Robert?

21 MR. ALDRICH: No questions.

22 MS. ALEJANDRO: Rod?

23 MR. BRELAND: Yes, I have a couple, Elsa. The

1 definition of miner, you talk about including frequent and  
2 regular. Are you satisfied with the present guidelines in  
3 the policy manual and --

4 MS. ROMAN: Yes.

5 MR. BRELAND: -- and frequent -- okay. When you  
6 talked about the evaluation of plan and the inspector's  
7 authority to disapprove, and so forth, did you have some  
8 ideas in mind of what would trigger a disapproval or what  
9 action would it take? Are you saying that they had to  
10 disapprove of a plan, you would recommend that that  
11 triggered like a G-order or a shut-down of an operation till  
12 training was changed or --

13 MS. ROMAN: Oh, well, the disapproval would be  
14 based on whatever the final requirements are for that  
15 training plan, and what we perceive or what we visualize is  
16 the operator being cited for not having a plan that meets  
17 the requirements, not merely shutting down the operation,  
18 but taking a look at what does that operator need to do to  
19 come into compliance and if it is substantial, then of  
20 course that inspector should take whatever actions are  
21 necessary.

22 But if I understand your question, no, we don't  
23 believe that the operator necessarily needs to be shut down

1 or that a withdrawal order needs to be issued, but that  
2 operator does need to be cited to communicate this plan is  
3 important; you need to have it as the rule says you should  
4 have it.

5 MR. BRELAND: But presently, you know, of course  
6 if MSHA finds an untrained miner, that's the direction to go  
7 is to withdraw that miner till they are trained.

8 MS. ROMAN: Right.

9 MR. BRELAND: And if the plan wasn't sufficient,  
10 then I think you'd run into some of those same problems.  
11 And then, I also want to make sure I understood on the  
12 contractors issue, you were talking about one that Kathy  
13 brought up, the 24 hours before. But your suggestion was  
14 that the language of the rule would require the mine  
15 operator to have some sort of documentation or just some  
16 sort of requirement that they reviewed the contractor's  
17 training program, if you will, and plan as well, some  
18 records of their people or how much involvement are you  
19 talking about there?

20 MS. ROMAN: Well, we would like to see more  
21 involvement. We would like to see the operator take greater  
22 participation in making sure that the people coming on that  
23 site are prepared to prevent injuries, accidents. And we



1 would like to see that operator actually ask for training  
2 plans from the contractor.

3 We would like to see the operator include in his  
4 or her contract with the contractor that requirement. We  
5 would like to see the operator document that he or she did  
6 receive a copy of the training plan from the contractor,  
7 that he or she did review it, that he or she did evaluate as  
8 to whether those employees had been trained as stated in the  
9 contract -- I mean, in the training plan.

10 MR. BRELAND: Okay. And then, your description  
11 you were talking about under close supervision, maybe  
12 changing that under observation you're saying if the  
13 training was not done prior to commencement of work, until  
14 such time that the 24 hours in its entirety and whatever  
15 task training might be required would be done, they would be  
16 under somebody's direct observation --

17 MS. ROMAN: Exactly, yes.

18 MR. BRELAND: -- that's got the experience or  
19 skills. Did you have a definition drafted yourself for  
20 that? Or is that --

21 MS. ROMAN: No.

22 MR. BRELAND: -- you're just talking about that,  
23 in general?

1 MS. ROMAN: Uh-huh.

2 MR. BRELAND: Okay.

3 MS. ROMAN: And we recognize -- I mean, there's  
4 one of the primary roles we perceive that supervisor to have  
5 is the safety and health of his or her employees of the  
6 people he or she supervises. But we also recognize the  
7 supervisor may not necessarily need to be the individual  
8 supervising or observing the employee until they receive all  
9 of the training. We just would like to see more emphasis  
10 placed on making sure that employee is taken care of, is  
11 observed throughout that process.

12 MR. BRELAND: So, in your view, that could be a  
13 co-worker who's been given training --

14 MS. ROMAN: Right.

15 MR. BRELAND: -- themselves maybe as to what to  
16 watch for and ensure that --

17 MS. ROMAN: Yes.

18 MR. BRELAND: -- their -- okay. And then, also,  
19 you talked about the evaluation factors that they would use,  
20 like interviews or list of questions. Does your program  
21 have that? You have a self-evaluation, I assume.

22 MS. ROMAN: Yes.

23 MR. BRELAND: Is it mostly a questionnaire either

1 after training?

2 MS. ROMAN: Exactly.

3 MR. BRELAND: And do you share that with the  
4 miners you've trained afterwards? I mean, you give the  
5 feedback to --

6 MS. ROMAN: We give the feedback to the operator.  
7 Many times, there are comments made during the training, we  
8 perceive, the operator needs to know. They may not  
9 necessarily go on the evaluation report but, yes, they need  
10 to be provided these comments. So, we provide feedback both  
11 through just close-out sessions and through the evaluation  
12 form that we provide the students.

13 MR. BRELAND: Is that evaluation form specific to  
14 each of the subjects you teach?

15 MS. ROMAN: No.

16 MR. BRELAND: It's more of a general -- so you use  
17 the same type of evaluation form for each --

18 MS. ROMAN: Yes.

19 MR. BRELAND: -- course? Okay. And the other  
20 thing, on the miners being taught in the language that they  
21 understand, I know that you've had some experiences in  
22 Texas. But do you have any feel for the number of miners or  
23 the number of mining operations that might be receiving

1 training in a language that they didn't understand,  
2 possibly, or materials they don't understand?

3 MS. ROMAN: Well I know in Texas, I think for the  
4 last 10 years I've been involved in training, I would have  
5 to say a good 35 to 40 percent of the mining industry in  
6 Texas requires training in other than English.

7 I perceived questions and comments from Florida,  
8 from New Mexico, from Oklahoma, from California, from  
9 Michigan, New York, from New Jersey, all of the other States  
10 Grants Programs in those areas, we've received calls from --  
11 requesting that we provide them with training in other than  
12 English, because they have substantial segments of the  
13 industry who need training in a different language.

14 MR. BRELAND: Okay. That's all I have. Thank  
15 you.

16 MR. BURNS: You mentioned about the evaluation of  
17 the training program on an annual basis; I would gather that  
18 that's something you'd recommend for all training, including  
19 Part 48 --

20 MS. ROMAN: Yes.

21 MR. BURNS: -- as you've indicated that there is a  
22 problem there already.

23 MS. ROMAN: Yes. We view that as a huge gap under

1 Part 48, currently.

2 MR. BURNS: Okay. Let's see what else was in  
3 here. The issue of other languages, I guess mainly it's  
4 Spanish but I'm sure there are other languages, also. Is  
5 the -- is there another issue involved in that area? Is  
6 there a problem with illiteracy in that sector, too, I mean  
7 pretty much mirror the illiteracy rate for English-speaking  
8 people in the country?

9 MS. ROMAN: Our --

10 MR. BURNS: Does it change the dynamics of how you  
11 do training?

12 MS. ROMAN: Right; exactly. Within Texas, we try  
13 to maintain our material, at highest, at about a 7th- or  
14 8th-grade level.

15 MR. BURNS: Okay.

16 MS. ROMAN: In the market or in the segment of the  
17 industry where Spanish is the primary language, we try to  
18 not go above the 6th-grade level, because the rate of  
19 illiteracy within that segment of the population is much  
20 higher than in the English-speaking segment.

21 MR. BURNS: Now I was just curious, I mean,  
22 because that would change the whole dynamic of how you  
23 train.

1 MS. ROMAN: Yes. And, see, that's why we bring it  
2 up, because it truly changes the competency issue. It truly  
3 makes you have to address what is competent and how do we  
4 get across to people the information they need, because they  
5 are making decisions every single day on how they do what  
6 they do. So, the more information they have as to how they  
7 make those decisions, the better chance we have of keeping  
8 those people from making the wrong decisions.

9 MR. BURNS: Okay. And then, would you be able to  
10 submit some of your evaluation forms, as far as --

11 MS. ROMAN: Sure; definitely.

12 MR. BURNS: -- if there are other tests or things  
13 you've seen --

14 MS. ROMAN: Okay.

15 MR. BURNS: -- even if they are not things that  
16 you used to evaluate the effectiveness of the training?

17 MS. ROMAN: Certainly.

18 MR. BURNS: That's all I have. I appreciate your  
19 comments.

20 MS. ALEJANDRO: Robert?

21 MR. STONE: Yes, just a couple of questions. You  
22 mentioned including in the cost, as I understand it, the  
23 costs of the miner's time, basically, while in the

1 classroom, as opposed to being in the mine in production. I  
2 believe that we have included those costs.

3 In fact, they are probably the dominant costs of  
4 the rule. We have a cost-per-mine of the various --  
5 cost-per-mine for the various provisions, and I believe  
6 those costs basically reflect that time. Another question,  
7 you didn't raise this issue today, but I think as I recall,  
8 you had provided some comments in Dallas --

9 MS. ROMAN: Uh-huh?

10 MR. STONE: -- regarding the compliance rates, in  
11 terms of being in compliance with the Part 48. And I don't  
12 want to put you on the spot, but I don't know if you had a  
13 sense to -- a chance to review our estimates of compliance  
14 rates for various sized mines. I don't know if you thought  
15 if those were approximately correct.

16 MS. ROMAN: Yes. I took a look at those  
17 percentages. And actually, I would say that they are quite  
18 conservative. I would probably add another 20 percent to  
19 each of those categories.

20 MS. ALEJANDRO: Now is that -- protects us? I  
21 mean, is that -- are you familiar with other --

22 MS. ROMAN: Yes.

23 MS. ALEJANDRO: -- okay.

1 MS. ROMAN: No, this protects us.

2 MS. ALEJANDRO: Okay.

3 MR. STONE: Okay. That's all my questions. Thank  
4 you.

5 MS. ALEJANDRO: Roslyn?

6 MS. FONTAINE: No.

7 MS. ALEJANDRO: Thank you very much, Ms. Roman.

8 MS. ROMAN: Thank you.

9 MR. STONE: Thank you.

10 MS. ALEJANDRO: The next speaker is Jim Sharpe  
11 from the National Stone Association.

12 MR. SHARPE: Good morning. My name is Jim Sharpe,  
13 J-I-M, S-H-A-R-P-E, director of Safety and Health Services  
14 for the National Stone Association here in Washington, D.C.  
15 NSA is a trade association that represents more than 680  
16 members in this country and abroad and approximately 75,000  
17 working men and women and aggregate industry.

18 NSA members account for approximately 90 percent  
19 of the crushed stone and 70 percent of the sand and gravel  
20 produced in the nation. NSA is a founding member of the  
21 18-member Coalition for Effective Miner Training, CEMT, and  
22 fully supports its effort to assist MSHA to develop rules  
23 that will bring about effective training for miners and the



1 seven industry sectors currently exempt from MSHA  
2 enforcement of Part 48 training.

3 Hunter Prillaman of the National Lime Association,  
4 another CEMT member, is here today and has already spoken on  
5 behalf of the coalition. While much of this proceeding will  
6 no doubt focus on some -- has no doubt or has, in fact,  
7 focused on specific provisions of MSHA's proposed Part 46  
8 Rule issued April 14th, I would like to take a broader view  
9 in my opening remarks.

10 Whether you are aware of it or not, mining regulatory  
11 history is being made by members of the MSHA panel here  
12 today, other MSHA personnel, and the dedicated men and women  
13 from industry and from -- (inaudible) -- who have been  
14 involved in this effort to craft a truly effective training  
15 rule for exempt industry miners.

16 While my experience with MSHA rule-making is  
17 limited, I've spoken to others whose memories reach back  
18 decades and to a person they assert they have no  
19 recollection of a rule-making quite like this one. This  
20 rule-making is unprecedented for a couple of reasons.  
21 First, it has developed with unusual speed, and I think Mr.  
22 Main made reference to that earlier. That's a good thing.

23 I recall a meeting on this matter between NSA

1 leadership with David McIntyre (phonetic) a year ago last  
2 February in San Antonio with a concept of negotiated  
3 rule-making was aired and, in particular, seemed less than  
4 enthusiastic. The process just took too long, he said.

5 Well, here we are today, a mere 15 months later  
6 standing on the very threshold of a day for training among  
7 aggregates, among exempt industry employees. Who among us  
8 would have predicted, then, how far along we would be today?

9 Part 46 rule-making will also go down in the  
10 history books because of the unusual degree of collaboration  
11 that occurred to make it happen and the exceptional spirit  
12 of cooperation that has permeated the process, not that  
13 there wasn't some off-going in the early period.

14 I refer to popular press coverage of this issue  
15 last June and July that misrepresented the subject so badly  
16 that it nearly derailed wholesome efforts at working towards  
17 a solution of a controversy that has been with us for two  
18 decades now. But with the substantial help of Congress, NSA  
19 and MSHA put aside their differences and began to work  
20 together for a common good.

21 To industry's credit, it would not let NSA stand  
22 alone. Last August, other exempt industry segments came  
23 together as one and took the first painful steps to get the

1 job done. From that modest beginning other industry groups,  
2 sensing something very good for the worker was underway,  
3 enthusiastically joined the coalition effectively doubling  
4 its size almost overnight.

5           The coalition, charged by Congress was producing a  
6 training proposal by February the 1st, worked feverishly  
7 throughout the fall of 1998, but unfortunately -- but  
8 fortunately, did not have to start from ground zero since an  
9 NSA draft was already extant.

10           All along, the coalition intended to involve  
11 labor, but was understandably hesitant because never before  
12 had it consulted with organized labor as equals and in an  
13 official way on the proposal that eventually would be used  
14 as a substantial basis for a rule to be enforced against the  
15 very industry which was writing it. But everyone knew that  
16 inviting labor was the right thing to do, and so it was  
17 done. Six humans were invited and four came, and coalition  
18 members fearing the worst, based largely on a fear of the  
19 unknown, were impressed at how knowledgeable, sincere, and  
20 cooperative the labor representatives were.

21           They represented their constituency with pride and  
22 grace and brought a perspective to the talks that simply was  
23 not there before. The training proposal, the process, and

1 the ultimate goal of improving the working environment of  
2 the miner were greatly enhanced by their presence and by  
3 their contributions.

4

5           For its part, MSHA has done itself proud, too. It  
6 has always been willing to meet with industry on Part 46, to  
7 share its position forthrightly, and to extend the kind hand  
8 of assistance. It promised to listen to the needs of  
9 operators, particularly small ones, and it did. It promised  
10 to issue a proposed rule in the spring, and it did.

11           The Agency continues to reach out to small  
12 producers for their views in these hearings in the recently  
13 inaugurated Safety Initiative and by inviting and, indeed,  
14 encouraging remarks to the docket before the June 16th  
15 close. I strongly suspect those of you on this panel today  
16 had a lot to do with all of this, and I'm here to tell you  
17 today that NSA is deeply grateful to each of you for what  
18 you've done for the working miner.

19           I am confident and extraordinarily optimistic that  
20 the final outcome of our collective efforts will be a  
21 training rule that provides the framework for delivery of  
22 effective training to miners and that our mutual reward will  
23 be a diminution to some unknown extent in the number of

1 accidents and injuries this work force is experiencing. You  
2 should be understandably proud of what you have accomplished  
3 so far.

4 I'm equally hopeful that the momentum from this  
5 singular experience will carry forward in the weeks and  
6 months ahead as industry, labor, and government grapple with  
7 other vexing safety and health issues -- the occupational  
8 noise exposure, hazard communication, surface haulage,  
9 diesel particulate exposure -- air contaminants, crystal,  
10 and silicon.

11 Part 46 will become the symbol of the  
12 extraordinary good we can do for the miner when we work  
13 together. It is truly a model for the future and represents  
14 government reinvention in the very best of senses. I  
15 implore you to help us make the Part 46 model the mechanism  
16 for interaction as we move through the tough issues that lie  
17 ahead.

18 Let me add just one more thought. Our efforts  
19 have not taken place in a vacuum. Congress has taken a keen  
20 interest in the process, and it's delighted with what it  
21 sees, so much so that congressional staffers inform us that  
22 they are telling other parties that bring grievances about  
23 regulatory agencies to their attention, about our Part 46

1 experience, how they want others to follow our lead.

2           And at yesterday's hearing before the Senate  
3 Subcommittee on Employment, Safety, and Training, where the  
4 theme was cooperation, Senator Mike Enzi of Wyoming singled  
5 out the Part 46 rulemaking, quote: "A true rulemaking  
6 success story," end of quote, was how he characterized it.

7           The satisfaction that comes with knowing we have  
8 been a part of this collective effort is unfathomable, and  
9 we tell you this so you can share in the pleasure of it.  
10 Part 48 was created 20 years ago in a buoyant caldron of  
11 annoyance and frustration with an industry suffering a  
12 persistent problem with serious injuries and fatalities.

13                       Fortunately, due to the  
14 Herculean efforts of dedicated professionals and labor,  
15 industry and government this environment no longer exists  
16 today. Fatalities in all of mining last year were at their  
17 lowest level since 1869 when records were first kept.

18           It seems fitting, therefore, that a prescriptive,  
19 administratively burdensome regulation that actually  
20 boulders on the road to effective training be swept aside in  
21 favor of a rule that takes into account the unique  
22 circumstances of the industry and allows the operator to  
23 adapt his or her training methods and procedures to those

1 unique circumstances.

2           Further, Section 115 of the Mine Act on which Part  
3 48 regulations are based does not prescribe a rigid approach  
4 to training. MSHA's proposed rule is largely appropriate  
5 for the industry and retains the spirit of Section 115. We  
6 look for the final rule to do the same.

7           We confess, though, to feeling some apprehension.  
8 In the preamble to the propose rule, MSHA has thrown the  
9 spotlight on nearly every provision of its proposal asking  
10 leaders to truly offer comments. While we loudly applaud  
11 this open-door policy, we cannot help but feel a little  
12 unease at where it might take the Agency in the final rule.

13           If sharp discrepancies between the two rules in  
14 key provisions occur, we will feel bamboozled because we  
15 will not have had the opportunity to comment on provisions  
16 that have not heretofore undergone the rigor of reasoned  
17 comment. We appreciate that the Agency is sensitive to this  
18 issue and, therefore, trust the final rule will contain no  
19 surprises.

20           We further recognize that the short time frame in  
21 which this rule was hatched precluded issuance of an  
22 advanced notice of proposed rule-making, an early step in  
23 the rule-making process formally dedicated to information

1 collection. You have heard comments on both sides of the  
2 question of certified instructors throughout this  
3 rule-making period.

4           Some who want them, such as States Grants  
5 personnel, feel they have a personal stake in the issue,  
6 because many of them see it as an issue of livelihood. But  
7 rather than take food from the mouths of States Grants  
8 personnel, we think instead it will be a feast for them.  
9 They will have more work than they can reasonably handle.

10           Or even though producers will have the green light  
11 to do their own training many, particularly small ones, will  
12 choose not to do so, at least as far as the mining refresher  
13 training is concerned. It was more convenient for them to  
14 contract out training under Part 48, and the same will  
15 remain true under Part 46.

16           Further, as you heard in hearings in December and  
17 January, some operators are not doing any training at all.  
18 This new rule will put an end to that practice, increasing  
19 the pressure for training providers. A related issue has to  
20 do with funding the States Grants Program.

21           Section 503 of the Mine Act has entitled  
22 assistance to states and stipulates that \$10 million a year  
23 be appropriated to states with approved programs in large



1 part to improve miner health and safety. In terms of MSHA's  
2 budget, this is not a substantial amount of money. NSA has  
3 repeatedly advocated this funding be approved, and now CEMT  
4 is taking up the issue.

5           With the new training rule coming, perhaps we will  
6 see it happen in FY 2000. We honestly hope so. We would  
7 also comment on the concern that the operator's in-house  
8 trainers, while long on know-how, may be short on teaching  
9 ability. We heard the previous speaker mention that very  
10 thing.

11           As a former professional educator myself, I would  
12 be among the last to take issue with a need for a trainer  
13 who knows how to instruct. Certification is, in part,  
14 designed to assure that trainers can teach, but it's no  
15 guarantee and never will be and there is professional  
16 certification by state education agencies. I'm not implying  
17 that I ever was a bad instructor, by the way.

18           Time and again, I've heard about the  
19 ineffectiveness of some certified instructors. You might  
20 say that only points to deficiencies in the certification  
21 process that, once corrected, would improve instructor  
22 competency, and that may be. But I assert that the nature  
23 of the aggregates industry with thousands of small

1 operations irrevocably widely disbursed many in rule areas  
2 makes the requirement for certified instructors impractical.  
3 So it is in this imperfect world.

4           So in this imperfect world, it may come down to a  
5 choice between a trainer who knows his or her stuff but  
6 can't communicate it well, versus a certified trainer with  
7 insufficient experience. If it were me, though, I'd choose  
8 the person who knows his or her stuff and trust most workers  
9 handed the safety information raw and unpolished will be  
10 able to sort it out for themselves.

11           This is preferable, in my view, to an instructor  
12 who can hold an audience spellbound, perhaps with a movie,  
13 as Mr. Main pointed out in his example, but with material  
14 devoid of substance. Let me make one final point on this  
15 issue. You have a -- (inaudible) -- docket from a  
16 representative of management from the sand and gravel  
17 operation in Texas.

18           Here's what he had to say about certified  
19 instructors, quote, "Certification of trainers is a problem  
20 for us, and it will be for other small companies. Our plant  
21 manager does a lot of good safety talks, but is not  
22 certified. If all of our training must be done by or under  
23 the direct supervision of a certified trainer, we have lost

1 the race before we leave the gate. We cannot call in an  
2 outside consultant who is a certified trainer each time we  
3 hire a new employee."

4           And then, parenthetically, he adds, "The last time  
5 I brought in such a person to the plant for one day, it  
6 costs just under \$2000." Without taking much more of your  
7 time, let me make several other points, and now we are  
8 getting into the specifics a bit here. NSA believes that  
9 workers are entitled to see the training plan and work with  
10 management to change it if the workers see something here  
11 she doesn't like.

12           We also do not object to posting the plan, but we  
13 think no purpose is served by sending to Educational Field  
14 Services for review. MSHA's inspectors have a twice-a-year  
15 opportunity to review the plan, and miners can complain to  
16 the district manager if they have a problem with it.

17           These built-in checks and balances should be  
18 sufficient. And the final rule should allow an operator to  
19 voluntarily send it to EFS for approval if he or she so  
20 chooses for whatever reason. NSA believes it is unnecessary  
21 to require the refresher training for newly hired  
22 experienced miners be completed within 90 days.

23           Operators should be permitted to conduct annual

1 refresher training for newly hired miners when providing it  
2 to other employees. The turnover in the stone, sand, and  
3 gravel industry is high, and most operators do not have the  
4 resources to provide 8-hour annual refresher training within  
5 90 days after hiring each individual employee.

6           This requirement will be an extreme burden for the  
7 aggregates industry. Neither the Mine Act nor existing Part  
8 48 regulations go to this extreme. To provide an historical  
9 perspective, the turnover issue was very much on the minds  
10 of senators debating the rider in the summer of 1979.

11           We submit that while turnover may be less than the  
12 50-plus percent per year mentioned during that debate, it  
13 remains unusually high to this day. NSA concurs with MSHA's  
14 decision to require that four topics be covered before the  
15 miner begins work, as well as its recommendation not to set  
16 a time frame on this instruction, with the exception of task  
17 training which I'll talk about more in a minute.

18           Contractors should be expected to train their own  
19 employees, and MSHA should not require that operators do it  
20 for them. NSA, therefore, recommends that MSHA make the  
21 appropriate change regarding site-specific hazard training  
22 in the final rule.

23           This, in no way, releases the operator from the

1 requirement to inform contractor supervisory personnel of  
2 site-specific hazards, so the contractor can in turn pass it  
3 on to his or her employees. We recommend that MSHA adopt a  
4 records-retention provision in Part 48, rather than what you  
5 have proposed.

6           Part 48 requires that training certificates of  
7 currently employed miners be retained for at least two years  
8 or for 60 days of termination of a miner's employment. The  
9 proposal would require retention for at least 12 months  
10 after termination of employment. We recognize you adopted  
11 the CEMT recommendation, but CEMT has since changed its  
12 position on this issue.

13           NSA did not believe that MSHA's definition -- does  
14 not believe that MSHA's definition of close supervision is  
15 practical. Because the Agency defines the term as requiring  
16 the supervisor both to be physically near the miner in  
17 training and to give the miner his or her undivided  
18 attention, we believe the effect of this interpretation will  
19 be to force the operator to provide all required training at  
20 one time, which runs contrary to other provisions of the  
21 proposed rule, those provisions having to do with  
22 flexibility, so forth.

23           We recommend the supervisor be the judge of how

1 closely the employee needs to be supervised. The  
2 application of supervisory resources should depend on the  
3 supervisor's understanding of the employee's knowledge and  
4 experience and of the supervisor's knowledge of the risk  
5 involved in the task the employee in training is asked to  
6 perform.

7 MSHA's use of the term "task training" is  
8 confusing. Section 115 calls for instruction in the, quote,  
9 "...health and safety aspects of the task," end of quote,  
10 both for new miners and -- both for new miners with no  
11 experience and for experienced miners reassigned to a new  
12 job for which they have had no previous experience. This is  
13 task training.

14 Yet, MSHA requires that both task training be  
15 among the first four subjects taught and devotes an entire  
16 section, or point 46.7 to, quote, "task training," this  
17 confuses. To clarify nomenclature, we recommend that MSHA  
18 drop use of the term altogether in favor of the Mine Act's,  
19 quote, "health and safety aspects of the task," end of the  
20 quote. Further, since task training  
21 is at the core of the training the miner receives, task  
22 training is at the core of the training the miner receives.  
23 NSA recommends that MSHA separate it from among the four

1 topics and clearly required be taught before the miner  
2 begins work on a task with which he or she is unfamiliar.

3           By doing that and by stating you envision training  
4 in the health and safety aspects, health and safety of  
5 assigned tasks to be central to the training given the  
6 miner, you will accord it proper emphasis. The act is  
7 supervised by a competent person is also task trained; that  
8 also needs to be made clear in the final rule. We request  
9 that MSHA consider a grace period of a year before  
10 enforcement begins.

11           Small operators are going to need this time to  
12 prepare for the new rule. During the period, outreach  
13 efforts to explain the rule to operators will need to occur  
14 and training materials to meet their needs developed. Since  
15 some of these tools will be computer-based, an extensive  
16 developmental period to bring them online will be required.

17           I'd also point out that these miners are also  
18 still subject to Part 48 training during this period of  
19 time, so it's not that they don't -- aren't required to do  
20 any training. In the event a final rule is not released by  
21 September 30, 1999, and the rider is not renewed for the  
22 next year, we seek written assurance from the Agency that  
23 Part 48 will not be enforced within the aggregates industry,

1 either within the exempt industries.

2           If a program policy, though, is the proper vehicle  
3 for doing this, we urge MSHA to take this action. I will  
4 close with just one other comment that also confuses, and  
5 that is that I noticed that the HAZCOM standard when issued  
6 in 1990 was issued under Part 46, and now we're talking  
7 about Part 46 training.

8           It looks like we're crowding two regulations into one  
9 part, at least that's the untrained eye here commenting, and  
10 it would seem that that's not what you intend. If it means  
11 that HAZCOM -- if it means that Part 46 cancels out HAZCOM,  
12 we wouldn't object. May it rest in peace. Thank you for  
13 your time.

14           MS. ALEJANDRO: Thank you, Mr. Sharpe. I just  
15 have one question myself. As far as task training, is your  
16 point that there's redundancy in the proposed rule because  
17 health and safety aspects of tasks assigned is one of the  
18 subject areas that needs to be covered under miner training  
19 and newly hired experienced-miner training? And then,  
20 there's also a separate new task training section.

21           MR. SHARPE: That's part of my point. The other  
22 part is that --

23           MS. ALEJANDRO: Okay.



1           MR. SHARPE: -- that that just confuses. You  
2 know, if health and safety aspects -- if health and safety  
3 aspects of the task is one of the four, if that's task  
4 training, then you have a separate section that says task  
5 training, it leads somebody to say, well, why are they  
6 calling the same thing by two different names.

7           MS. ALEJANDRO: Okay. That's all I have. Robert?

8           MR. STONE: No questions.

9           MS. ALEJANDRO: Rod?

10          MR. BRELAND: You mentioned the turnover ratio in  
11 the industry. Do you have some current numbers?

12          MR. SHARPE: Kevin asked me that six months ago,  
13 and I was not really very successful in getting a turnover  
14 rate. The best that -- I can give you a guesstimate of  
15 about 15 to 20 percent but I --

16          MS. ALEJANDRO: Annually?

17          MR. SHARPE: -- wouldn't want to be quoted in the  
18 literature extensively on that.

19          MS. ALEJANDRO: Is that an annual rate?

20          MR. SHARPE: Annual, uh-huh, in aggregates.

21          MR. BRELAND: My understanding of it is that it  
22 really varies by location in an area. In the  
23 Baltimore-Washington corridor where there's a lot of job

1 opportunity, it may be higher --

2 MR. SHARPE: Right.

3 MR. BRELAND: -- than it is in an area where  
4 there's very little job opportunities.

5 MR. SHARPE: Right.

6 MR. BRELAND: So, it can be very high in some  
7 areas and very --

8 MR. SHARPE: And that's why it's so difficult to  
9 put a figure together, to put a number together.

10 MR. BRELAND: Would that include the seasonal  
11 operation that tends to hire the -- a lot of the places hire  
12 the same individuals every year to come, or try to at least  
13 -- their crusher operator or somebody they know they are not  
14 going to have to retrain.

15 MR. SHARPE: My guess is that it would not include  
16 the seasonal operator.

17 MR. BRELAND: But there really isn't a handle on  
18 it, apparently.

19 MR. SHARPE: No, there isn't. There isn't, no.

20 MR. BRELAND: The other thing on the competent  
21 person evaluating the -- I guess my question would be  
22 picking a mine superintendent or plant manager, I mean, it  
23 makes a lot of sense a lot of times if this person's

1 certainly got the knowledge; that he's been around. How do  
2 you determine, as a mine operator, would you think you could  
3 evaluate their effectiveness?

4           And we've heard some discussion on there are a lot  
5 of knowledgeable people really don't communicate well or  
6 they might not write well or they might not plan out the  
7 objectives. Or they could change from one group of new  
8 miners to the next.

9           They don't necessarily follow some of the same  
10 formats, so how do you see -- you have this flexibility in  
11 determining, though, these competent people. How would you  
12 determine the effectiveness of the training?

13           MR. SHARPE: Well, certainly, somebody we know --  
14 his or her job is important and has experience in that. I  
15 say I would choose my -- if I were the operator, I probably  
16 would choose my most -- the supervisor that that was the  
17 most effective, because that supervisor not only knows his  
18 job and has experience, but has effectiveness; he's an  
19 effective supervisor for other reasons.

20           And one of them is probably his ability to  
21 communicate. So, that's probably how I would do it. It's  
22 an issue; it requires thought. I thought the woman who  
23 preceded me here had some very good ideas that, frankly, I'd

1 like to think more about. You're really asking about how  
2 you determine whether a teacher is going to be a good  
3 teacher.

4           Again, I'm getting back to my old educational  
5 principle days, and that debate goes on to the state and the  
6 public schools and even in the private schools and probably  
7 be debated from now out infinitum. But, certainly, the  
8 ability to communicate is important, and a supervisor who  
9 shows effectiveness as a supervisor would strike me as  
10 having those skills.

11           MR. BRELAND: Yes. And I could understand that,  
12 but I guess the issue I was asking for some clarity on is  
13 that it could be kind of all over the board. And also, the  
14 other issue with this competent person being often the most  
15 skilled, most knowledgeable on site is also the busiest, and  
16 taking time out to basically stop and walk somebody through  
17 a process could be difficult when you have some other  
18 urgency going on.

19           Again, it might be difficult for that person to have  
20 the time to do if there's only one, and there's nothing that  
21 says there has to be one.

22           MR. SHARPE: Yes.

23           MR. BRELAND: But it's an issue of how we would

1 look at -- how would we handle that from, you know, even an  
2 enforcement standpoint; how does an operator handle it from  
3 knowing what would be expected, that type of thing.

4 MR. SHARPE: Well, you make a point that in the  
5 small operation, you're not going to have the latitude to  
6 choose who your competent person is. That would only be one  
7 person, I'm sure. It's who it is, and that's it because  
8 there is no one else. You know, you look behind you and  
9 there's no one there. You also make the point that the  
10 supervisor's going to be busy. He's obviously busy now;  
11 you're making him busier still.

12 That's true, and I see that over and over again.  
13 Good people always get more work to do, but for some reason  
14 they seem to be able to handle it. And, again, if I were  
15 the operator, I had a crackerjack supervisor, I had three  
16 people working for me, that supervisor would be responsible  
17 for training those people, because first of all, he'd be a  
18 good supervisor, and I would know he'd do the job.

19 MR. BRELAND: Okay. And just one other thing for  
20 clarification on the task training issue or task. I wasn't  
21 sure, were you talking about task as an occupation versus  
22 the elements of the task or the safety aspects? I guess I  
23 got a little confused with --

1           MR. SHARPE: I'm referring to -- I'm referring to  
2 the core of this whole training program in Part 46 is  
3 teaching people how to work safely. I mean, that's the  
4 bottom line here. Yes, of course, that's true; rights have  
5 something to do with that, but it's how you do the job well.  
6 And that, by the way, is one way an inspector will be able  
7 to determine the effectiveness of the plan.

8           Yes, you can interview the employee to find out  
9 how much they know, but there are pitfalls with that, I can  
10 assure you, based upon my own training that I did in my  
11 previous job.

12           An employee will tend to get tight when you walk  
13 up to him and start asking him specific questions about  
14 statutory rights, for example. He may know the answer, but  
15 he can't tell you what it is, because he wasn't expecting  
16 the question and he's tightened up. So what does the  
17 inspector do if he can't answer the question? Cite the  
18 operator for inadequate training? I think that would be  
19 grossly unfair.

20           I think the key is more to observe the worker and  
21 his work habits and see if he does work safely. I mean,  
22 that's really what you're -- you're trying to effect a  
23 behavior change here. It's not so much what's in their head

1 is how they can translate that into the labor that they are  
2 doing with their hands.

3 Are they working safely? That seems to me to be  
4 where it is and that's been an inspector -- if I were an  
5 MSHA inspector in trying to evaluate this program, that's  
6 what I'd be looking for. And I'd be looking for, you know,  
7 a whole culture of safety in that quarry or, you know, maybe  
8 not a quarry, but wherever.

9 If I saw a culture of safety, I'd be convinced  
10 that safety's being emphasized. If I didn't see it, if I  
11 saw signs they were down or signs that should have been up  
12 and weren't there at all or site-specific hazard training  
13 that doesn't include everything or an operator who doesn't  
14 wear his hard hat out in the mine when he should and  
15 everybody else is required to, he doesn't, that's not a  
16 culture of safety. There's something wrong there so that --  
17 have I answered your question or around the --

18 MR. BRELAND: Well, not exactly from the  
19 standpoint I want to make sure you weren't calling task as  
20 the occupation.

21 MR. SHARPE: Yes. I'm -- yes. I'm talking the  
22 job, the person that's going to do. That's what I mean by  
23 task --

1 MR. BRELAND: So if --

2 MR. SHARPE: -- a specific job he's going to do.

3 MR. BRELAND: Okay. Well, I'm a crusher operator,  
4 then that's my task is what --

5 MR. SHARPE: That's correct --

6 MR. BRELAND: Okay.

7 MR. SHARPE: -- the health and safety aspects of  
8 operating a crusher.

9 MR. BRELAND: Okay. I just want to make sure I  
10 understood that's the point you were trying to make with  
11 that. And then, on the training plan you see the issue of  
12 inclusiveness with the people at the site, including the  
13 miners, and so forth, but your concern was specifically with  
14 their ability to request a review of the plan?

15 MR. SHARPE: You know, I actually think, my  
16 personal opinion is -- this is probably much ado about  
17 nothing or much ado about a little. We've already, I think,  
18 heard -- Kevin, did you mention that you haven't seen a lot  
19 of this review under Part 48?

20 MR. BURNS: As far as an abuse, no.

21 MR. SHARPE: Yes, an abuse of it.

22 MR. BURNS: No.

23 MR. SHARPE: MSHA itself in talking about this



1 rule-making in some of its public statements, Tom McCloud,  
2 for example, I mean there was an article in the Aggregates  
3 Manager in '98, May of '98 I think, that I quoted in some of  
4 the testimony that I submitted. I've written so much on  
5 this I don't know what I submitted and what I wrote any  
6 longer, but MSHA was concerned about all this back and forth  
7 paperwork business, too.

8       What's -- this just -- you know, the bottom line is  
9 what does the guy know and how is he doing his job.  
10 Shuffling paper back and forth doesn't accomplish anything.  
11 What you need is a system of checks and balances that you  
12 have that operate the United States Government and you have  
13 that in place.

14             The worker, there's nothing in this law, this  
15 proposed rule, that says that that miner cannot go to the  
16 operator either through his representative or on his own and  
17 say there's something wrong with this plan, and here's what  
18 I think it is. There's nothing wrong with that.

19             And by requiring that you be -- be posted,  
20 requiring that they get into the hands of the operator, you  
21 are doing what I consider to be your job to make sure that  
22 the miner's informed of what the training plan -- that he,  
23 first of all, knows that there is such a thing as a training

1 plan and that he'd been given the opportunity to read it.

2           You have that and, all right, there are going to  
3 be some work places where a miner goes to the operator and  
4 says the training plan's inadequate and they are going to  
5 make a change. There's going to be some operations where  
6 the miner's going to go to the operator and say your  
7 training plan's inadequate and you need to have some  
8 changes, and the miner's going to say no.

9           And there's other operations where the miner's  
10 going to look at the training plan and say it needs to be  
11 changed but be afraid to go to the operator. And there's  
12 other work places where the miner's going to tell his  
13 workers the representative's going to go. So, you have that  
14 part of a check and balance. I mean, you have that much  
15 right there which is great, because it sort of takes you out  
16 of all of this.

17           That's what you want; you want the miner and the  
18 owner to be interacting here on this issue. But on top of  
19 that if you're, you know, disquieted by that, you have the  
20 ultimate hammer of having an inspector take a look at it.  
21 If it doesn't meet the requirements, bingo, and the  
22 inspector's there twice a year. That's two reviews a year.

23           That's not bad, and you also have the EFS now.

1 You're going to have 50 people across the country there.

2 The EFS is part of what they are to do is come out to the  
3 mine site. I would think one of the things they would do is  
4 say let me see your mine plan, your training plan. If they  
5 look at it and they said it doesn't have this, they come in  
6 and advise the operator to make a change. You're free of  
7 the fear of a citation.

8           You have -- what I'm trying to say is that the  
9 checks and balances that are necessary, you have very  
10 skillfully written into this in my opinion. I also think  
11 there's going to be some operators -- and this came up in  
12 the discussions with the coalition -- who are going to want  
13 their training plan sent to EFS. They are going to want  
14 EFS's imprint (phonetic) on this thing, for whatever reason,  
15 legal or whatever.

16           They are just going to voluntarily ship it off.  
17 I'm not so sure that I, as an operator, wouldn't do that. I  
18 get free consultative advice from EFS on it, and hopefully I  
19 get protected from the vagaries of an inspector who, you  
20 know, and you have this problem.

21           Different inspectors provide or come to the --  
22 come to a mine site with different things that they  
23 emphasize, different levels of training so you have a little

1 bit of an even enforcement. If I were an operator, I'd be a  
2 little worried about that, so I'd take it to the EFS; I'd  
3 get their imprint, their letter; that's the end of that. I  
4 could say I just -- this one troubles me. I'm probably  
5 talking more on it than I think it's worth.

6 MR. BRELAND: Well there's a -- you know, again,  
7 I'll quote some earlier discussion in a hearing where maybe  
8 we're looking for a bogeyman that might not be there. Maybe  
9 it's not as big an issue; just like you said, much ado about  
10 nothing really. But the -- some concern would be that a  
11 miner might not feel they have the inclusiveness to be a  
12 participant in the process if they weren't aware even of the  
13 regulation or reading it, but that's just one statement  
14 that's been made.

15 MR. SHARPE: Well, we might be covered under  
16 statutory rights of miners in the training. I mean, you  
17 covered it; there's a Part 46 Training Rule. The miner is  
18 required to give you 24 hours and 8 hours. The average  
19 training plan, you're required to look at it. Wouldn't that  
20 be covered?

21 MR. BRELAND: I would think it should be, yes.  
22 One other thing just on the training plan submission that  
23 you brought up that is a good issue, there were some

1 projections made that maybe some 20 percent might submit for  
2 review. Basically, to get that approval, if you will, of  
3 that -- (inaudible) -- that this is good so you don't have  
4 somebody coming out and saying this is --

5 MR. SHARPE: Right.

6 MR. BRELAND: -- and here's a violation or  
7 something like that. Do you have some feel for that? Would  
8 you expect most of your membership to submit?

9 MR. SHARPE: I wouldn't expect my small ones to.  
10 The real small ones, no. I expect the larger ones. In  
11 fact, some of the larger ones are just going to go with Part  
12 48, and the other larger ones are probably going to submit a  
13 training plan. The smaller ones probably won't.

14 Again, it's the whole thing of resources for them,  
15 the whole thing of resources. You know, you can tell them  
16 that they can submit it. Then they say, oh, they'll make a  
17 note of it and then, you know, they just never get around to  
18 it, you know, and this kind of thing. So, I think you'll  
19 see there's a big -- going to be a dichotomy there between  
20 the large and the small operators.

21 MR. BRELAND: Do you see that some of the larger  
22 ones or even the associations maybe suggesting they might do  
23 that?

1 MR. SHARPE: They'll certainly do it, sure.

2 MR. BRELAND: I mean, it seems like that could be  
3 something that could happen; somebody might say they want to  
4 avoid that conflict. You may --

5 MR. SHARPE: Well, I know what they'll say.  
6 They'll say, I'm a member of your association. You write  
7 the model training plan. You get that sent to EFS and  
8 approved, and then send it to me. Then, I'll fill in the  
9 details. That's what they'll do. Maybe, that's the way to  
10 go.

11 MR. BRELAND: I'm not advocating that, because the  
12 paper issue is a concern. I mean, it's important to have  
13 good paper, I think, to have outlines and follow and make  
14 sure you're doing things. But the quality and effectiveness  
15 is, I think, what everybody is looking for so --

16 MR. SHARPE: Yes; yes. That's true. It's  
17 important to have good paper, but it doesn't tell you you're  
18 going to have good instruction. I can write you a lesson  
19 plan as a teacher. That's how I was trained. I was trained  
20 every class I had to do a lesson plan. Since I had five  
21 classes a day, it meant to spend an hour on a lesson plan  
22 after work; seriously cut into my tennis time, so I ended up  
23 ad libbing a lot of my classes.

1           You know what I found? They went better; they  
2 went better than where I had a prepared outline. I'm not  
3 trying to say that's what's going to happen here. What I'm  
4 saying here is a -- examples of a plan, in and of itself, is  
5 no assurance. If I had to emphasize a plan, what I would  
6 emphasize mostly would be the objectives.

7           What are you trying to teach here and put them in  
8 action terms to be sure the worker does so and so, but it's  
9 no assurance. I will grant you that one is needed. NSA is  
10 not here saying that that's not a part of what we're  
11 recommending, neither has the CEMT said that. A good  
12 training plan is a good place to start.

13           MR. BRELAND: Okay. Thank you very much.

14           MS. ALEJANDRO: Kevin?

15           MR. BURNS: You're done already?

16           MR. BRELAND: I just had one or two.

17           MR. BURNS: I just had a couple of questions on  
18 the task training and the issue of health and safety aspects  
19 of the task to be performed. One of the concerns is that  
20 task training is addressed in two separate parts, and that  
21 can be -- introduce some confusion.

22           MR. SHARPE: It's addressed in two parts, and you  
23 use two different terms. One is health and safety aspects

1 of the task and the other is task training, and that's  
2 correct.

3 MR. BURNS: Are those two issues, though? I mean,  
4 do you have a problem with the redundancy, because I don't  
5 necessarily see that as being a bad thing.

6 MR. SHARPE: I don't have any problem with  
7 redundancy. I just get the nomenclatures. I read it and I  
8 was confused by it. I went back to the Mine Act. The Mine  
9 Act says nothing about task training. It says health and  
10 safety aspects of the task, so I concluded that what you  
11 must be talking about is health and safety aspects of the  
12 task and task training being one in the same.

13 And I just thought it would be clear and less  
14 confusing if people understood what task training actually  
15 was, that you used a common term. And also, I think the  
16 concern I have, the second point I made in my testimony was  
17 that if you group it with -- among the first four, my  
18 concern is that it will be de-emphasized in that process,  
19 that you're going to have an operator who's going to be very  
20 interested in getting his new employee out there to get the  
21 work.

22 And so, but he says I've got to give him these  
23 four -- I've got to cover these four subjects. I don't have



1 a particular time period in which to do it, but I have four  
2 subjects that I have to teach. And he may think he can do  
3 that in a two-hour time frame.

4 Task training, the core of Part 46, I don't know  
5 if you're going to be able to do that in half an hour. I  
6 doubt it, so my suggestion is that you pull that out and  
7 emphasize task training and explain that you feel that this  
8 is the crux of this whole rule and give it the proper  
9 emphasis and give it the emphasis I think it properly  
10 deserves, so that it's not glossed over. Have I confused  
11 you, Kevin?

12 MR. BURNS: No; no. But I guess one thing I could  
13 see where that would address that concern, rather than get  
14 rid of it out of new-miner training, is that it's clearly  
15 stated even in new-miner training that no miner shall do a  
16 task without receiving task training.

17 I see no problem with new-miner training also  
18 addressing the types of hazards and health and safety  
19 hazards that they may be faced with at that mine site as  
20 they perform different tasks, but also with the idea that  
21 before they perform those tasks, there'll be some additional  
22 and more in-depth training on those particular tasks.

23 So, I think maybe we can make that more clear that

1 it isn't short-circuited through the new-miner training that  
2 they go over everything that you can possibly do in a rather  
3 short period of time and say that accomplishes our task  
4 training, too.

5 MR. SHARPE: Right.

6 MR. BURNS: That's not the intent, and so I wanted  
7 to be clear on that. I wasn't quite clear on your  
8 discussion of the qualified trainer and how -- you gave the  
9 example, I believe, of the person, say, at a small mine  
10 where you have someone that understands all the mining  
11 aspects that are involved in mining, but may not be a great  
12 trainer; they may not be able to communicate that.

13 MR. SHARPE: Yes. He doesn't have educational  
14 principles to rely on to communicate the message. He  
15 doesn't have that. And that's what -- you know, I don't  
16 know what the curriculum-certified MSHA -- certified  
17 instructors are but, certainly -- and I think the previous  
18 speaker alluded to this -- there are certain educational  
19 principles that must go into that. I mean, how you deliver  
20 the message, not just what the message is, but how you  
21 deliver the message? That's what I'm getting at.

22 MR. BURNS: Well, that's what I was asking here.  
23 Are you saying that there should be something done to ensure

1 that the --

2 MR. SHARPE: No; no.

3 MR. BURNS: The previous speaker stated that, you  
4 know, make sure that that person has the total --

5 MR. SHARPE: I'm saying that -- I'm saying this,  
6 that it would be nice to have that, but it's not practical.  
7 You call the operator from Texas who said certified MSHA  
8 instructors for me. You know, we've lost the -- we've lost  
9 this before we get out of the gate. It's not practical for  
10 those small operations way, way out there in the sticks.

11 So, in an imperfect world, you have to make -- you  
12 have to choose; you have to compromise here. And my  
13 compromise is that I'll take every time, every time, a  
14 person who knows his job, who has experience in it, but who  
15 can't teach worth a lick over somebody who can wow me to  
16 death, who's a great entertainer when he stands up before me  
17 for 30 minutes or an hour -- I'm spellbound by his  
18 performance, but when I walk out of the room, what have I  
19 got?

20 I don't have anything, because there's no  
21 substance because that person doesn't have experience. So,  
22 what I'm saying is the miner -- give the miner the benefit  
23 of the knowledge and the experience of a supervisor, even

1    though it comes to him raw and unpolished and, hopefully,  
2    the miner who is highly motivated because his life is at  
3    stake is -- you know, he could be injured, so forth, he's  
4    living this every day; he can sort through it, and he has  
5    the ability to ask that supervisor questions.

6                But if I'm a student and I'm asking somebody who  
7    is a great instructor, who doesn't know what the hell he or  
8    she is talking about, a question that they can't answer,  
9    what good is that for me? So, I'm saying that we have to  
10   compromise in this imperfect world. And let's take a person  
11   with knowledge and experience over somebody who has a  
12   wonderful grounding in educational principles.

13               MR. BURNS: I'm a little bit troubled by that.  
14   You know, you're kind of describing a            lesser-of-two-  
15   evils scenario and I think --

16               MR. SHARPE: But tell me how you're going to solve  
17   this --

18               MR. BURNS: -- it's better than that.

19               MR. SHARPE: But tell me how you're going to solve  
20   this practicality problem, Kevin?

21               MR. BURNS: I think the previous speaker explained  
22   that this is -- I'd almost treat this person as the same as  
23   someone that you're training. I mean, you've got to give

1 that person the tools to do the job you're asking them to  
2 do, him or her to do.

3 MR. SHARPE: Well I would --

4 MR. BURNS: So I think -- I mean, I think  
5 that's --

6 MR. SHARPE: The NSA would be interested --

7 MR. BURNS: I guess what I'm saying is what we  
8 envision as a competent person may be different than what  
9 you're describing it as, because I think you are describing  
10 a lesser-of-two-evils scenario in some cases. And I don't  
11 think that's really what --

12 MR. SHARPE: No; no. Well, I'm making an  
13 implication that that may not hold up to. I'm making an  
14 implication that the supervisor can't teach. And I made an  
15 earlier comment in response to a comment from Rod is that a  
16 supervisor is a supervisor, because he has good  
17 communication skills so I'm sure of that. I mean, there's  
18 some culling process that goes along with picking a  
19 supervisor, and they probably have good communication  
20 skills, and that's what we're talking about here.

21 MR. BURNS: We've all had experiences otherwise.

22 MR. SHARPE: And we've all been -- and some of us  
23 have been to college, and all of us have been through high

1 school and we've gotten teachers who couldn't teach worth a  
2 lick and who had professional certifications that say they  
3 can.

4 MR. BURNS: I just wanted to be clear on what  
5 you're saying. I didn't want to get into a debate.

6 MR. SHARPE: But what I'd like, Kevin --

7 MR. BURNS: But --

8 MR. SHARPE: -- Kevin, NSA's mind is not closed;  
9 its mind is not made up. I probably could speak for the  
10 CEMT; its mind is not made up. If you have -- MSHA has a  
11 proposal that it would like to put forth to address the  
12 issue raised by the previous speaker that you yourself  
13 raise. Let's take a look at it. Let's take a look at it.  
14 I mean, like I say this is -- what we're talking about  
15 cooperation here. Nobody's mind is foreclosing anything  
16 here.

17 MR. BURNS: No. I'm -- that's why I wanted to be  
18 clear on that, because I think she made a good point that  
19 that is important that, you know, whoever the person is  
20 that's doing the training should have the tools to be able  
21 to do the training.

22 MR. SHARPE: I will remind you of a comment that  
23 you made in March of '98 that I've never forgotten. MSHA

1 does not want to see the village idiot do this training and  
2 neither do we.

3 MR. BURNS: That's right.

4 MR. SHARPE: Neither do we.

5 MR. BURNS: Anybody else?

6 MS. ALEJANDRO: Robert?

7 MR. STONE: Yes. Actually, I have several  
8 questions, really, many points of clarification. Let me  
9 just ask you one question on this exact topic. I'm curious  
10 to know your view on having supervisor instructor training,  
11 because it sounds like the example you're getting actually  
12 was very disturbing, I think, where the miner's being  
13 confronted by either not being able to have the information  
14 pointed to him or having the instructor not having the  
15 skills or knowledge to impart.

16 MR. SHARPE: Right.

17 MR. STONE: And that has happened; that has  
18 already happened with certified MSHA instructors. The  
19 people that you think can do the training aren't getting it  
20 done. You heard Joe Main say that very thing in one  
21 example, and I've heard that example over and over and over  
22 again about certified MSHA instructors and certified  
23 instructors.

1 I've just heard it, and you hear -- your own kids  
2 come home and say oh, God, I've got several teachers; I had  
3 so many professionals in college that couldn't teach, I  
4 ended up having to teach myself.

5 MR. SHARPE: That's not a happy experience; is it?

6 MR. STONE: No, it's not. We're living in the  
7 real world here. I mean, there's got to be some give and  
8 take and some compromise but I am -- I repeat, I liked the  
9 idea of the suggestion that was made earlier, at least it  
10 was intriguing. I won't say I liked it; it was intriguing  
11 that we try to do something to assure that the competent  
12 person can teach. But the devil is going to be in the  
13 details of that, folks, I can tell you. The devil's going  
14 to be in the details, and that's what I want to see.

15 MR. SHARPE: Okay.

16 MR. STONE: You had indicated that the number of  
17 mines that might seek a review of the training plans would  
18 vary according to the size of the mine. Basically, you  
19 think larger mines would tend to take advantage of having an  
20 MSHA review. We had estimated across the board about 20  
21 percent, and we're taking into account the fact that some  
22 mines might, for reliability reasons or other reasons,  
23 prefer to have a formal review.



1           Do you have a sense of whether that number -- how  
2   you might estimate numbers by the size of the mine? In  
3   other words, we estimated 20 percent across the board. Do  
4   you think that might be a reasonable average? And even if  
5   that were the case, do you have a sense of how you might  
6   allocate reviews for what percentage of large mines would  
7   have reviews, for example?

8           MR. SHARPE: Well, I guess you've got to make a  
9   distinction between large mines and large -- and large  
10   producers --

11          MR. STONE: Okay.

12          MR. SHARPE: -- large mines where there are lots  
13   of miners physically at one site --

14          MR. STONE: Right.

15          MR. SHARPE: -- versus a large producer who's got  
16   a couple of hundred sites, some large, some medium, and some  
17   small.

18          MR. STONE: I see.

19          MR. SHARPE: It's very difficult for me to answer  
20   the question.

21          MR. STONE: Right.

22          MR. SHARPE: I, you know, I think I'm going to  
23   have to ask the membership about that. I just -- I'd rather

1 give you nothing than give you information that's not going  
2 to be right.

3 MR. STONE: Okay.

4 MR. SHARPE: And I can do that. I can certainly  
5 do that.

6 MR. STONE: Okay. I appreciate that.

7 MR. SHARPE: I've got to get an answer to you.

8 MR. STONE: I'd appreciate it. Thank you. The  
9 other question is, another point of clarification, you had  
10 mentioned a rough estimate of annual turnover. I think  
11 you'd said 15 to 20 percent. Were you referring to the  
12 stone industry or to --

13 MR. SHARPE: The aggregates.

14 MR. STONE: Really?

15 MR. SHARPE: Aggregates, yes.

16 MR. STONE: Because we actually --

17 MR. SHARPE: Not the exempt industries, no.  
18 Aggregates.

19 MR. STONE: Aggregates; okay. And I think we were  
20 actually using a substantially large --

21 MR. SHARPE: Yes. And I think --

22 MR. STONE: -- estimate and I think you were  
23 exempt for aggregates.

1           MR. SHARPE: And I think you should, because my  
2 recollection of where that number came for me was from a  
3 small -- on a large operator or two.

4           MR. STONE: Okay.

5           MR. SHARPE: And I doubt that they are a  
6 representative, and I don't think that that number included  
7 sand and gravel.

8           MR. STONE: Okay.

9           MR. SHARPE: So if you have a larger estimate, I  
10 would put more money on that than mine.

11          MR. STONE: Okay.

12          MR. SHARPE: Sorry.

13          MR. STONE: Thank you. That's it.

14          MS. ALEJANDRO: Roslyn?

15          MS. FONTAINE: Nothing.

16          MS. ALEJANDRO: Thank you very much, Mr. Sharpe.

17          MR. SHARPE: Thank you.

18          MS. ALEJANDRO: We have reached the end of our  
19 list of speakers who have signed up. At this point, I'd  
20 like to ask if there's anyone here who has not spoken who  
21 would like to have the opportunity to speak. Is there  
22 anyone here who has already spoken who would like the  
23 opportunity to present additional remarks?

1 MR. PRILLAMAN: Let me say just one thing.

2 MS. ALEJANDRO: Sure, Mr. Prillaman?

3 MR. PRILLAMAN: I just wanted to follow-up on a  
4 couple of points. On this issue that you were just  
5 discussing about a competent person, I think that Kevin put  
6 his finger on the real issue. How do we make sure that the  
7 competent person has the tools that are needed to teach?

8 I think we're, perhaps, limiting ourselves a  
9 little too much if we think in terms of tools; has that  
10 person had a formal training course in how to teach.  
11 There's a lot of other kinds of tools that are going to be  
12 used in training -- interactive training modules, CD ROMs,  
13 tapes. I think a lot of times, the actual training is going  
14 to be supported by trade associations and by others,  
15 whoever's going to provide material.

16 I can tell you, my own association right now is  
17 looking into preparing a videotape that would be used as  
18 part of basic safety training at lime plants, and we've  
19 already allocated money to do that. That's going to be part  
20 of the tools that someone would use.

21 So, I guess what I would say about it is the  
22 operator should have the obligation to evaluate whether the  
23 competent person has the appropriate tools to teach the

1 miners. And in some cases, that may mean that some  
2 supervisor has got to go and take an education course if  
3 they really don't have those things.

4 But I do think that it should be within the  
5 discretion of the operator to make those determinations,  
6 because only that operator can really see what tools are  
7 needed and what tools are available to that particular -- to  
8 that particular competent person. So that was just what I  
9 wanted to add on that point.

10 I did just want to point out one sort of  
11 misconception that was raised earlier that the idea that  
12 hazard training can be conveyed by posting signs. I do want  
13 to support the idea that site-specific hazard training  
14 should be a sliding scale, and it should be tailored to the  
15 risks that the individual is exposed to.

16 Someone who is going to go down to the mine site  
17 and be exposed to the real hazards of the mine, obviously,  
18 it would be inadequate to try to train that person with  
19 signage. And I don't think that's anybody's intention,  
20 including the way you've written the rule.

21 The idea would be, though, that if there's someone  
22 who comes onto the mine site merely to deliver soft drinks  
23 to the office, that a sign that says "Do Not Enter This

1 Area" might be sufficient for that person. The idea is that  
2 rather than having some rigid set of site-specific training  
3 that has to be delivered, you know, lock-step fashion to  
4 everyone that comes on the site that it's going to be  
5 tailored to the risk of the people that are exposed to, and  
6 I think that's what we had in mind. And I think --

7 MS. ALEJANDRO: Yes, I think that that was the  
8 intention of what's in the proposal is that it's going to  
9 depend on the circumstances and the individual, as far as  
10 what appropriate site-specific hazard training would be.

11 MR. PRILLAMAN: Okay. The third and last issue I  
12 wanted to mention is something that it's a little more  
13 complicated issue, but you got into a little bit in some of  
14 the other discussions; and that is the issue of when is new-  
15 miner training requirement triggered? Is it when you start  
16 working at a new mine site or when you start working as a  
17 miner?

18 This was raised in the context of a contractor who  
19 may go from mine to mine and those are concerned, well, this  
20 person may never get all his new-miner training. I would  
21 think that that person should get new-miner training when he  
22 becomes a miner, even if he's going to work in a lot of  
23 different sites. And this is something that there's some

1 confusion in the rule, the preamble, about just how that's  
2 going to work.

3       And I think you should be aware -- you probably are  
4 aware that this may be an issue for, not just for  
5 contractors, but for people who work for operators, because  
6 particularly in the aggregates industry and some of these  
7 others, there are people who work on more than one site on a  
8 pretty regular basis. Maybe for a few months or maybe even  
9 on a weekly or monthly basis, they may go to different sites  
10 to work.

11       And so, we certainly wouldn't want to -- there to be a  
12 suggestion that they have to get new-miner training every  
13 time they switch sites within the same company. So, this is  
14 just an issue that I think needs to be clarified.

15       The concept ought to be you get new-miner training  
16 when you become a miner or even -- and really ditto for  
17 experienced-miner training; you get that when you go to work  
18 for a new entity, but that you don't necessarily get  
19 complete new training every time you go to a new site if  
20 part of your job is going to multiple sites.

21       MS. ALEJANDRO: Yes. We realize that intermittent  
22 employments is a problem in this segment of the industry,  
23 and we need to take a close look at that as we develop the

1 final rule to make sure that we're, you know, we're not  
2 creating loopholes, and we're also ensuring that everybody  
3 gets the training that they need within an appropriate time  
4 period.

5 MR. PRILLAMAN: Yes. There's some issues like  
6 that, and there's some people --

7 MS. ALEJANDRO: Right.

8 MR. PRILLAMAN: -- other things like that I think  
9 need to be -- and that's all I have.

10 MR. BRELAND: If I could just to follow-up on the  
11 contractor, you talked about the signage for the driver  
12 that's coming on site, you know, like "Keep Out" because  
13 they are supposed to go take care of the vending machine, or  
14 something.

15 MR. PRILLAMAN: Right.

16 MR. BRELAND: How do you see the contractor that's  
17 coming on site, as far as hazard training that might go in  
18 the pit area to haul the materials, and what have you?

19 MR. PRILLAMAN: Well, first of all, I make two  
20 distinctions. If the contractor is a miner, then he should  
21 get miner training --

22 MR. BRELAND: Okay.

23 MR. PRILLAMAN: -- either from -- either for the



1 specific site or if he's, like, a blaster or something, he  
2 should have miner training as a blaster. And that person  
3 probably still needs -- for that person or one who's not a  
4 miner, they need to get site-specific hazard training that's  
5 commensurate with the risks that are involved.

6 And if he's going down into a pit area, well, I  
7 would suspect signage isn't enough. But as to exactly what  
8 would be required, I don't know. In some cases, a card  
9 saying, here, you know, read this and explain to me that you  
10 understand it; in some cases, a short class. In some cases,  
11 more of a class. I think the point is, it depends on what  
12 the risks the person is exposed to, and that should be  
13 determined by the person who's providing the training.

14 MR. BRELAND: Okay.

15 MR. PRILLAMAN: Okay?

16 MR. BRELAND: Okay; thank you.

17 MS. ALEJANDRO: Thank you very much. Is there  
18 anyone else who would like the opportunity to speak?

19 MR. TURNER: Thank you. My name is James Turner,  
20 T-U-R-N-E-R. I'm here representing the State of North  
21 Carolina, the North Carolina Department of Labor. Most of  
22 my comments echo what Mr. Main and Ms. Roman said, and I'd  
23 like to first of all compliment MSHA for trying to make this

1 new rule workable for everyone, especially considering the  
2 different varieties of metal and non-metal mines in the  
3 companies and the problems they have. However, we do have  
4 some reservation about some specific issues.

5           First of all, as has been stated here quite a bit,  
6 competent person. If MSHA is thinking about eventually  
7 doing away with the certified or approved instructors, we  
8 think this is a big mistake, because the majority of the  
9 mining operations, especially in North Carolina, has 10 or  
10 less employees and many of the operators and contractors do  
11 not know what mining laws are.

12           They don't know the people, liabilities involved  
13 in some of the mining laws, nor do they necessarily  
14 understand what hazards are, accident prevention techniques  
15 or -- and per se, of course, and these are critical  
16 components of having an effective training program. Many  
17 production operators have not a clue to some of those --  
18 about some of these techniques and training requirements, so  
19 how can they pick a competent, what you call, a competent  
20 person?

21           What about one- and two-men operations or what we  
22 call mom and pop operations? Are they going to train each  
23 other, train themselves? There are two issues here that

1 need to be addressed, the knowledge of the subject matter,  
2 and communication and teaching the skills.

3           Certainly, a task or task training needs to be  
4 taught by someone who knows the task, knows how to do the  
5 task, but there's still a need for effective instruction,  
6 someone who knows how to outline a lesson plan and to  
7 evaluate the effectiveness of that training. Training  
8 instructors need to be approved either by MSHA's  
9 certification or they should have equivalent training and  
10 experience.

11           The definition of experienced miner, we think the  
12 language should include those persons having received OSHA  
13 training. We do agree with that. OSHA training equivalent  
14 to Part 48 or Part 46, Part 48 or Part 46 training, along  
15 with 12 months of experience in directly related tasks.

16           And what I mean by that, an OSHA employee who has  
17 operated a bulldozer and has been trained to operate that  
18 bulldozer safely and that person applies for a job on a mine  
19 site, if that person has applied for a dozer operator  
20 position, then he should be hired as an experienced miner,  
21 as long as he has had 12 months of experience.

22           The definition of a miner, distinctly, this  
23 definition should be more specific as to include the words,

1 "employees of independent contractors". It does not include  
2 the independent contractor. It says, you know, working in  
3 an integral part of the production. It doesn't really  
4 specify independent contractor, employees of independent  
5 contractors.

6           So if you have independent contractors working,  
7 extracting the minerals, or crushing the minerals, the  
8 product, then it needs to be more specific. While the 46.5  
9 and 46.6, which address new-miner training and newly hired  
10 experienced-miner training, there should be one additional  
11 subject added to these categories, and that should be  
12 emergency medical procedures.

13           In Part 48, as far as experienced miners, they  
14 added that to experienced-miner training to get instruction  
15 in emergency medical procedures. We're not requiring that  
16 to any new person at the mine site, because a person that's  
17 new to a mine site should have instructions in that subject  
18 matter.

19           Part 46.8, Annual Refresher Training, Section A,  
20 the way that this is worded, it sounds like the 8-hour  
21 training has to be given at one time. It would be better  
22 stated that the training would be given within an  
23 established 12-month period, rather than saying that the

1 training must be given -- 8 hours of training must be given  
2 at once. What did it say?

3 MS. ALEJANDRO: Yes. It was -- I mean --

4 MR. TURNER: It says that at least once every 12  
5 months, you must provide miner with training, so it's like  
6 all at one time you give them --

7 MS. ALEJANDRO: Yes. I mean, that's obviously --  
8 I mean, in the preamble, it's clear that that's not what we  
9 intended, but we understand why that would be confusing.  
10 Okay.

11 MR. TURNER: Finally, I would like to express some  
12 concerns about States Grants Programs since North Carolina  
13 is a grantee and how this new rule may affect its survival.  
14 In the new rule, it doesn't require MSHA-approved  
15 instructors. There would be less need for States Grant  
16 Program, but to provide that service.

17 I know in North Carolina, we have a very  
18 successful program for training instructors. As of February  
19 1999, we have trained 797 MSHA-approved instructors, and we  
20 conduct an 80-hour program. In order for a person to  
21 provide effective instructions on any subject matter, they  
22 need to know the law.

23 They need to know how to -- the law is being

1 interpreted by MSHA, and they need to know why the training  
2 is needed. And a company person all the time will not know  
3 why it says here, I must give you this, this, this, but why,  
4 I don't know. But the person who knows the law, been  
5 properly trained as an instructor would be able to convey  
6 that message.

7           There will also be less need for a state to  
8 conduct operator designee, so-called "company person" to do  
9 the training. The company person conducting the training  
10 would cut out a lot of the training that the state grantees  
11 are doing. Why call in a state agency or a grantee to do my  
12 training when I can have my high school son here who  
13 finished high school come in and do the training for us?  
14 He's my company person.

15           And lastly, what I'd like to share is that's going  
16 to be an increase -- with the increased demand that the  
17 Transportation Equity Act is going to create for mining,  
18 especially Crushed Stone Industry Aggregates Association,  
19 this is probably going to increase the likelihood of more  
20 accidents, because you're going to have less training, less  
21 time to provide the training, and more production demand.

22           So, therefore, the designated company person may  
23 be the operator, probably will end up getting -- assigning

1 the person who has the less responsibility on my part; one  
2 that he can provide without more -- more expendable, you  
3 might say. But those are some of the comments that I wanted  
4 to make.

5 I just want to make sure that I share with you all  
6 that some of these definitions are vague. They leave it too  
7 much for interpretation, and if you leave it for  
8 interpretation, more than being specific, it's just going to  
9 lead to more problems. Thank you.

10 MS. ALEJANDRO: Thank you very much, Mr. Turner.  
11 I've got a couple of questions and others may, as well. I  
12 want to make sure I understand. As far as competent person  
13 is concerned or approved instructor, people who are going to  
14 be providing this training, I thought I heard you say that  
15 you believe that people who provide training should either  
16 be approved by MSHA under something that's similar to the  
17 current certification program or that they have equivalent  
18 training or experience.

19 Now, are you saying that you could see that it  
20 might be appropriate to have -- I mean, do you think  
21 everyone needs to be formally approved, or if they need a  
22 certain, should we establish minimum standards in the rule  
23 itself that they need to meet? I guess I'm not really clear

1 on what your point was.

2 MR. TURNER: If the rule contains language or  
3 minimum experience, training and experience --

4 MS. ALEJANDRO: You know, specifically sets  
5 minimum training and experience requirements?

6 MR. TURNER: Right.

7 MS. ALEJANDRO: Okay.

8 MR. TURNER: Or they --

9 MS. ALEJANDRO: Or if they don't meet today's  
10 specific requirements, an alternate would be to be approved  
11 as a certified instructor by MSHA? Is that --

12 MR. TURNER: That way and also --

13 MS. ALEJANDRO: Okay.

14 MR. TURNER: -- through experience and training,  
15 they could submit that to MSHA to be approved, rather than  
16 going through a course.

17 MS. ALEJANDRO: Okay; which I think is sort of the  
18 way it happens now.

19 MR. TURNER: That's the way that it happens;  
20 right?

21 MS. ALEJANDRO: Yes. I mean, they have minimum --  
22 either the minimum requirements --

23 MR. TURNER: Right.



1 MS. ALEJANDRO: -- or they get, you know, they  
2 submit it and they get approved; okay.

3 MR. TURNER: Approved.

4 MS. ALEJANDRO: So, I guess what you're saying  
5 then is that you support a Part 48-type instructor-approval  
6 program?

7 MR. TURNER: Yes.

8 MS. ALEJANDRO: Okay. And you also were making  
9 the point about the definition of experienced miner to make  
10 it clear that a person who has got 12 months of  
11 experience --

12 MR. TURNER: Even if it's OSHA-related experience.

13 MS. ALEJANDRO: You mean, it would be non-mining  
14 related, but the activities would be similar?

15 MR. TURNER: The tasks.

16 MS. ALEJANDRO: Yes. I think that that -- I mean,  
17 that was the intention because I think it says that a miner  
18 who has, right, 12 months of surface mining or equivalent  
19 experience --

20 MR. TURNER: Yes, it does say in there about OSHA-  
21 equivalent training.

22 MS. ALEJANDRO: Okay. I mean, the intent -- the  
23 intention was that we recognize -- I mean, as a result of

1 comments that we got from some of the speakers in the  
2 pre-proposal public meetings that there are workers out  
3 there who did -- may have a lot of work at  
4 non-MSHA-regulated sites -- I mean, at OSHA-regulated sites,  
5 but that for all intents and purposes, I mean, the type of  
6 work that they do or the equipment that they operate is  
7 similar, if not identical, to the type of work they do on --  
8 might do on --

9 MR. TURNER: My point is that it's not stated, you  
10 know, in the rule.

11 MS. ALEJANDRO: Okay; yes. I mean, I think by  
12 using the term, "equivalent experience", that's what we  
13 meant, but your point is that it's not clear in the rule  
14 that that's what we mean.

15 MR. TURNER: Right.

16 MS. ALEJANDRO: Let's see. You didn't address  
17 this, but I'll ask you. And if you don't want to take a  
18 position on it, that's fine. We are interested in getting  
19 some idea of what period of time the mining community is  
20 going to need to come into compliance with the requirements  
21 of the new rule. Do you have any --

22 MR. TURNER: Well, I think that the stagnant  
23 period of up to six months to get a training plan if you're

1 going to have training-plan approval, I also agree with that  
2 approval. But to come up with a training plan, designer  
3 training plan, and then addition six months to have the  
4 training take place.

5 MS. ALEJANDRO: Okay; yes. I just want to make a  
6 remark and, I mean, I understand your point. As far as a  
7 definition of miner, you indicated a concern that it does  
8 not appear to include independent contractors.

9 And, I mean, our intention was that, you know,  
10 whoever works at a mine site, whether they are employed by  
11 the production operator or by the independent contractor, if  
12 they are exposed to -- I mean, if they are engaged in  
13 certain activity, they are miners and they would be required  
14 to get comprehensive training.

15 So whether they are independent contractors or  
16 not, I mean, those rules would be intended to apply the  
17 same. But I guess your point is it's not clear in the  
18 definition that those workers are included in that  
19 definition.

20 MR. TURNER: To me, a definition is supposed to  
21 define specific things, and these definitions leave too open  
22 for interpretation by the person what's supposed to be --  
23 it's supposed to be ruling, and therefore, it's just going

1 to cause a lot of confusion and more, you know, violations.

2 MS. ALEJANDRO: Okay. Well, we'll take a look at  
3 that. Thank you. That's all I have. Robert?

4 MR. STONE: No questions.

5 MS. ALEJANDRO: Rod?

6 MR. BRELAND: Just a couple to make sure I'm  
7 really clear on the approval of instructors. You say they  
8 should be approved or have, the way you first said, it was  
9 just equivalent experience and I guess I was --

10 MR. TURNER: Experience in training.

11 MR. BRELAND: Experience in training?

12 MR. TURNER: Yes.

13 MR. BRELAND: That's what I was wondering, what  
14 criteria you meant, so something to show they have done some  
15 training before and not necessarily in the mines, but  
16 somewhere that shows --

17 MR. TURNER: Correct; a person who has experience  
18 maybe as an OSHA instructor, have worked around the mine  
19 sites sometime or a related industry such as construction,  
20 things of that nature, and have demonstrated the ability to  
21 instruct and convey information.

22 MR. BRELAND: Okay. And then, you say North  
23 Carolina does 80 hours of instruction. Now, is that an

1 initial, like, 24 hours of training that would be given?

2 MR. TURNER: No. This is for instructor  
3 certification training.

4 MR. BRELAND: That's what I mean, but does that  
5 include what would be expected to be taught in a 24-hour  
6 class?

7 MR. TURNER: Yes. The way our -- we call it the  
8 Instructor Institute -- the way it's laid out is that the  
9 first week is spent going over the Mine Act, how the  
10 standards evolved from the Mine Act, and the Policy Manual  
11 is used. But we're tying all of these legal documents, as  
12 far as mining, and we have instructor's presentations during  
13 that brief -- instructor presentations during that period.

14 And then the second week, we go over the subject  
15 matter. Accident prevention or the accident prevention  
16 course should pertain not how to teach one what information  
17 should be disseminated in such a course, how to put the  
18 information together; same thing about hazard recognition or  
19 electrical hazard, things of that nature --

20 MR. BRELAND: Okay.

21 MR. TURNER: -- and first-aid for the second one.

22 MR. BRELAND: Do you evaluate each of those  
23 modules or however you break those subjects up? Or do you

1 just do an overall course evaluation where you make a  
2 determination or recommendation?

3 MR. TURNER: You mean, do we do it or does the  
4 participant do it?

5 MR. BRELAND: Whoever's putting on the instruction  
6 or the training.

7 MR. TURNER: We have the -- yes. We have the  
8 participants evaluate the course themselves. Then we, in  
9 turn, evaluate those evaluations to see what changes need to  
10 be made.

11 MR. BRELAND: Okay. And then, just one other  
12 question, you said you had, North Carolina had instructed  
13 797 participants. Was that for last fiscal year, or  
14 something, or calendar year?

15 MR. TURNER: No. That's since -- we've been doing  
16 this since 1978.

17 MR. BRELAND: Okay.

18 MR. TURNER: As a matter of fact, this week we're  
19 ending up a course with 13 in it.

20 MR. BRELAND: Okay. Thank you. That's all.

21 MS. ALEJANDRO: Kevin?

22 MR. BURNS: Yes. Just on the -- your 80-hour  
23 program, is that mine-specific or is that --

1 MR. TURNER: Yes.

2 MR. BURNS: Okay. I wasn't clear if that also  
3 included OSHA-type --

4 MR. TURNER: No. OSHA, all mines.

5 MR. BURNS: Okay. Everything else I had has been  
6 asked. I appreciate --

7 MS. ALEJANDRO: Yes. Robert?

8 MR. STONE: Yes. I just had one question. Do you  
9 have any sense from your experience in North Carolina what  
10 type of compliance rates you're observing there for mines?

11 MR. TURNER: As far as training?

12 MR. STONE: Yes, Part 48.

13 MR. TURNER: We have a high percentage of  
14 compliance in North Carolina.

15 MR. STONE: Okay. You want a hazard percentage  
16 or --

17 MR. TURNER: Percentage, I would say, 75 to 80  
18 percent.

19 MR. STONE: All right.

20 MR. TURNER: The majority of the people who are  
21 not compliant are the one- and two-man operations.

22 MR. STONE: Okay. Thank you.

23 MS. ALEJANDRO: Roslyn?

1 MS. FONTAINE: No.

2 MS. ALEJANDRO: Thank you very much, Mr. Turner.

3 MR. TURNER: Thank you.

4 MS. ALEJANDRO: I'd like to ask again is there  
5 anyone here who has spoken or not who would like the  
6 opportunity to make remarks? If not, I'd like to thank  
7 everyone who attended and particularly thank those who have  
8 made oral presentations.

9 I'm going to give you a very short summary of what  
10 happens next. As I indicated earlier, the rule-making  
11 record will be open until June 16th for submission of any  
12 written comments you may have to MSHA. And if you need an  
13 address to send those comments, please feel free to come up  
14 here after the hearing closes and we can give you that  
15 information.

16 After the rule-making record closes on June 16th,  
17 we're going to move to develop and draft the final rule and  
18 with the intention of publishing it in the Federal Register  
19 on or before the congressionally mandated deadline of  
20 September 30, 1999.

21 Transcripts of this hearing and three other public  
22 hearings, which were held in the last couple of weeks, will  
23 be available on our web site at "www.MSHA.com". There is a



1 Part 46 Training Regulation button on the main home page,  
2 and if you click on that, that will take you to the area  
3 where Part 46-related information is included.

4           And I don't know what the line time is on these  
5 transcripts, but they probably all ought to be up there in a  
6 week or two. Again, I thank you all very much for coming,  
7 and if you have any questions, please feel free to come up  
8 and talk to us after the hearing. And otherwise, thank you  
9 very much, and I hope to see you all around later. Take  
10 care. Bye-bye.

11           (Whereupon, at 11:45 a.m., the hearing in the  
12 above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A  
CASE TITLE: RETRAINING OF MINERS  
HEARING DATE: May 27, 1999  
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United State Department of Labor.

Date: May 27, 1999

Sharon Cook

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